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THE

MISCELLANEOUS DOCUMENTS

OF THE

SENATE OF THE UNITED STATES

FOR THE

FIRST SESSION OF THE THIRTY-FIFTH CONGRESS.

IN FOUR VOLUMES.

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MISCELLANEOUS DOCUMENTS

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SENATE OF THE UNITED STATES

FOR THE

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Resolutions of the legislature of New York, in favor of a law to provide for the final settlement and payment of the half-pay for life, &c., to the officers of the revolutionary army	3	221
Resolutions of the legislature of the State of New Jersey, in favor of the advancement of Lieutenant M. F. Maury to that position in the navy to which his distinguished services entitle him	3	222
Resolutions of the legislature of New Jersey, in favor of appropriations for the better preservation of life and property in cases of shipwreck, &c	3	223

	Vol.	No.
Resolutions of the legislature of New Jersey, in favor of a donation of public lands to that State, &c., for the founding and maintaining of agricultural colleges therein	3	224
Resolutions of the legislature of New Jersey, in favor of the restoration of the ports of Jersey City and Camden to that State, and making them ports of entry; also in relation to ports of entry at Tom's River and Atlantic City, &c	3	225
Memorial of the Magnetic Telegraph Company, and of the New England Union Telegraph Company, praying the enactment of a law which will prevent combinations between citizens and companies in the United States, and monopolists and companies out of the United States, for the purpose of oppressing telegraph companies, and monopolizing the business of telegraphing in the United States, &c	3	227
Resolution of the legislature of California relative to the admission of Kansas into the Union as a State under the Lecompton constitution	3	228
Resolution of the legislature of California in favor of the establishment of a weekly mail-route in certain counties in that State, and the location of certain post offices therein	3	229
Resolution of the legislature of California in favor of the establishment of a weekly mail from Weaverville, *via* the mouth of Cañon creek, to Cañon city, in that State	3	230
Resolutions of the legislature of Massachusetts relating to the decision of the Supreme Court of the United States in the case of Scott *vs.* Sandford	3	231
Resolutions of the legislature of Massachusetts relative to the admission of Kansas into the Union as a State	3	232
Memorial of the legislature of Iowa asking Congress to divert the grant of lands to said State for public buildings to an agricultural college	3	233
Memorial and resolutions of the legislature of Iowa in relation to the five per cent. school fund	3	234
Memorial and resolution of the legislature of Iowa in relation to the grant of land by Congress for the improvement of the navigation of the Des Moines river	3	235
Resolution of the legislature of Iowa in favor of certain additional mail facilities	3	236
Resolution of the legislature of Iowa in relation to the pension of Catharine Dickerson	3	237
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Memorial of the legislature of Iowa in favor of the repeal of the duty on sugars	3	239
Letter of the delegate of the Territory of Utah in Congress, enclosing the memorial of delegates of the convention which assembled in Great Salt Lake City, and adopted a constitution with a view to the admission of Utah into the Union as a State, together with a copy of that constitution	3	240
Resolution of the legislature of Wisconsin in relation to the admission of Kansas into the Union as a State	3	242
Resolution of the legislature of New York requesting the senators, &c., to advocate the promotion of Lieutenant Maury to such rank in the navy as his meritorious services entitle him	3	243
Resolution of the legislature of Virginia in favor of the final settlement of half-pay to officers of the revolutionary war, &c	3	244
Memorial of the American Telegraph Company in answer to the memorial of the Magnetic Telegraph Company and the New England Union Telegraph Company, and remonstrating against the prayer of their memorial being granted	3	245
Resolutions of the legislature of California in favor of the interposition of the general government for the release of J. M. Ainsa, an American citizen, held in captivity at Sonora, in Mexico	4	257
Resolution of the legislature of California in favor of the construction of a breakwater at San Luis Obispo, in that State	4	258
Resolution of the legislature of California in favor of the donation of land to each of the States and Territories of the Union for the endowment, &c., of colleges of agriculture, the mechanic arts, and natural history	4	259

	Vol.	No.
Resolutions of the legislature of New York in favor of the enactment of a law granting pensions to the surviving soldiers of the Indian wars from 1791 to 1795, and to the widows of those deceased	4	260
Resolutions of the legislature of New York in favor of a donation of land for the construction of a ship canal around the Falls of Niagara	4	261
Resolutions of the legislature of New York in relation to public lands	4	262
Memorial of Tal. P. Shaffner, praying for an amendment of the act of March 3, 1857, entitled "An act to expedite telegraphic communication for the uses of the government in its foreign intercourse," &c	4	263
Resolutions of the legislature of New York relative to the Pacific railroad	4	264
Resolutions of the legislature of New York against the enactment of any law which may remove the charge of the light-house system from the custody of the present board	4	265
Resolutions passed at a meeting of the citizens of Georgetown, D. C., protesting against the prayer of citizens residing an the "heights" of that town to be excluded from the corporate limits thereof	4	268
Resolutions of the Board of Aldermen and Board of Common Council of the corporation of Georgetown, D. C., protesting against the receding of any portion of that town to the county of Washington	4	269
Memorial of the citizens of Georgetown, D. C., some of whom reside on the "heights," remonstrating against the prayer of certain citizens of that town to have a portion thereof excluded from the corporate limits	4	270

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 146.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

REBEKAH HEALD *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington, this first day of February, A. D 1858.
[L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

To the honorable the United States Court of Claims:

The petition of Rebekah Heald, the widow of Major Nathan Heald, late of St. Charles county, in the State of Missouri, most respectfully represents:

That on the 15th day of August, 1812, her husband, then Captain Heald, an officer in the United States army, commanded Fort Dearborn, in or near Chicago; that she, your petitioner, resided there with him, and that they were possessed of considerable personal property, all of which was lost at the destruction of said Fort Dearborn, on the said 15th day of August, 1812, by the Indians, and by whom they were taken prisoners.

That an inventory or schedule of the property thus lost is herewith annexed, together with its supposed valuation.

Your petitioner further states that, after the death of her husband, she, in the month of December, 1847, petitioned Congress for payment and remuneration for the property so destroyed by the Indians and lost to them.

That her petition was forwarded to the Hon. Thomas H. Benton, then a senator *in Congress from Missouri,* and was accompanied by

the depositions of two ladies of Chicago, who were well acquainted with all the facts in relation to their capture and the destruction of their property; that by some strange fatality the petition and testimony were lost or mislaid, and were never presented to Congress; that both of the ladies at Chicago are now dead; that their testimony, duly taken, was full and complete; that her said petition was furthermore accompanied by the additional testimony of Colonel John O'Fallon and Colonel John Ruland, of St. Louis, Missouri.

Your petitioner prays that her claim may be examined and adjudicated upon in such manner as may be conformable to the rules and regulations of your Court; and, if necessary, that a commission may be granted to take the depositions of witnesses in St. Louis, Missouri, to substantiate her claim.

The major part of the property lost was her own, and over which her husband exercised no control; but, perhaps, when legally considered, the title was in him. If such be the construction, then I appeal in the name of his legal representatives for pay.—(Relies upon 5th article of amendments to the Constitution, 3 U. S. St., 261; sec. 6, 397; sec. 6, 465, chap. 124; and general principles of public law.)

REBEKAH HEALD.

UNITED STATES TO REBEKAH HEALD, DR.

For loss of property (personal) taken and destroyed by Indians on the 15th day of August, 1812, at Fort Dearborn, on the destruction of the fort, viz:

One negro woman, Cicily, and her child, valued at.....	$1,000 00
One side-saddle, bridle, and martingale.....	35 00
Three horses.....	500 00
Two cows and calves.....	50 00
Household furniture.....	200 00
Silver spoons and tumblers.....	75 00
Table furniture complete.....	75 00
Clothing.....	600 00
Jewelry.—Ear-rings, breastpins, rings, &c.....	50 00
	2,585 00

STATE OF MISSOURI, }
County of St. Charles, } *ss.*

I, Rebekah Heald, do swear that the facts stated by me in the petition, so far as they are of my own personal knowledge, are true; and, so far as they depend upon the information of others, I believe to be true; and that the schedule annexed is a true account of the property lost, and the estimated value, say two thousand five hundred and eighty-five dollars.

REBEKAH HEALD.

Subscribed and sworn to before me, the undersigned justice, this *9th October, 1855.*

JOSIAH B. COSBY, Justice of the Peace.

STATE OF MISSOURI, }
County of St. Charles, } *ss.*

I, John K. McDearmon, clerk of the county court of St. Charles county, certify that Josiah B. Cosby, esq., before whom the foregoing affidavit of Rebekah Heald was made, and whose genuine signature is thereunto attached, is now, and was at the time of so doing, an acting justice of the peace, duly commissioned, sworn, and qualified within and for said county; and that all his official acts, as such, are entitled to full faith and credit.

In testimony whereof, I have hereto set my hand and seal of [L. S.] said court, at office, this 11th day of October, 1855.

JOHN K. McDEARMON, *Clerk.*

To the honorable the Court of Claims of the United States:

Rebekah Heald, a petitioner to the Court of Claims, begs leave to file this supplementary petition, to make certain amendments which she is advised are necessary to her original petition.

Your petitioner founds her claim on the implied contract which exists between the government and its citizens to afford them protection against all hostile depredations, and the repeated recognition of their liability in cases similar to this of your petitioner.

No one is interested in the said claim but the petitioner, and the legal representatives of her late husband, in whose behalf she petitions, who are Darius Heald, (son of the petitioner and her late husband, Nathan Heald,) and Nathan Heald McCausland and Alexander A. McCausland, (grandsons of the petitioner and her late husband, Nathan Heald.)

Your petitioner desires that her petition may be so amended as to include the above statements, and prays leave to amend the schedule thereunto annexed, by adding thereto a watch and a gun that were lost at the same time, and in the same manner set forth in the petition, and that were of the value of one hundred and fifty dollars.

REBEKAH HEALD.

STATE OF MISSOURI, }
County of St. Charles, } *ss.*

This day personally appeared before me, Josiah B. Cosby, a justice of the peace duly authorized by law to administer oaths within and for the county aforesaid, Rebekah Heald, whose name is subscribed to the foregoing petition, and who being by me duly sworn, upon her oath says that said petition and the facts therein set forth are true.

Sworn to and subscribed before me this 4th day of January, 1856.

JOSIAH B. COSBY,
Justice of the Peace.

STATE OF MISSOURI, }
County of St. Charles. }

I, John K. McDearmon, clerk of the county court of said county, certify that Josiah B. Cosby, esq., whose proper signature appears to the above affidavit of Rebekah Heald, is now, and was at the time

of so doing, an acting justice of the peace within and for said county, duly commissioned and qualified, and that, as such, his acts are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and seal of said court, at office, in the city of St. Charles, this 7th day of January, 1856.

[L. S.]

JOHN K. McDEARMON, *Clerk.*

IN THE COURT OF CLAIMS.

REBECCA HEALD *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

The petition states the following facts:

The petitioner is the widow of Captain Heald, deceased.

On the 15th of August, 1812, her husband was a captain in the army of the United States, and then resided with the petitioner, his wife, at Chicago.

At that time Captain Heald was commander of Fort Dearborn, in or near Chicago, where he and the petitioner then had personal property of the value of $2,585.

The Indians, on the said 15th of August, 1812, destroyed Fort Dearborn, when all said personal property was lost, and Captain Heald and the petitioner, his wife, were taken prisoners. The greater part of the personal property so lost belonged to the petitioner.

The object of the petitioner is to recover the value of said personal property either for herself or for the legal representatives of her said husband.

At the time of said destruction of Fort Dearborn the United States and the Indians were at war; and the claim, therefore, is for the value of private personal property destroyed by an enemy in time of war.

We think that there is no difficulty in this case. The government is not bound to pay for the property in question. No doctrine is better settled than that the government of an invaded country is not liable to pay for private property destroyed by the enemy. This subject was before us in 1856, in the case of Casius M. Clay, and the decision was against his claim. In the opinion in that case, the authority of Vattel is relied on. That author, speaking of the damages caused to individuals by acts of the enemy, says: "All the subjects are exposed to such damages; and woe to him on whom they fall! The members of a society may well encounter such risk of property, since they encounter a similar risk of life itself. Were the State strictly to indemnify all those whose property is injured in this manner, the public finances would soon be exhausted; and every individual in the State would be obliged to contribute his share in due proportion—a thing utterly impracticable. Besides, these indemnifications would be liable to a thousand abuses, and there would be no end of the particulars. It is therefore to be presumed that no such thing was ever intended by those who united to form a society."—(Vattel's Law of Nations, book 3, chap. 15, sec. 232.)

Our opinion is, that the petition shows no cause of action.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 147.

RESOLUTIONS

OF

THE LEGISLATURE OF IOWA,

INSTRUCTING

The senators, and requesting the representatives of that State, in Congress, to oppose the admission of Kansas into the Union as a State under the Lecompton constitution.

FEBRUARY 4, 1858.—Ordered to lie on the table and be printed.

Preamble and joint resolution of instruction concerning the admission of Kansas into the Union under the Lecompton constitution.

Whereas, application has been made, or is about to be made, to the Congress of the United States, for the admission of Kansas into the Union under the instrument known as the Lecompton constitution; and whereas, among other grave questions arising from said application, is that presented by the fact that the convention which framed said instrument refused to submit it fairly to the people of said Territory for ratification or rejection; and whereas, the question thus presented involves one of the fundamental principles upon which our government, State and national, are all based; and whereas, it is eminently right and proper that the several States should, through their general assemblies, express to their senators and representatives in Congress their opinions upon such questions; therefore—

Be it resolved by the general assembly of the State of Iowa, That our senators in Congress be instructed, and our representatives requested, to oppose the admission of Kansas as one of the States of our Union under the so-called Lecompton constitution, because, among other reasons, said constitution was not submitted by the convention which framed it to a fair and honest vote of the people of the Territory of Kansas for ratification or rejection.

Resolved, That we condemn the President of the United States, senators in Congress, and all others in authority under the Constitution of the United States, who have advised or consented to the admission of Kansas into the Union under the Lecompton constitution.

Resolved, That the terms of the pretended submission of the Lecompton constitution to the people of Kansas Territory, employed in

the schedule of said constitution, viz: that the votes, if cast, must be for the constitution, are an insult to common sense, and an outrage on common honesty, and had their origin in a bold determination to thrust slavery on Kansas in opposition to the consent of the people of said Territory, and in violation of the spirit of our national Constitution.

Resolved, That our senators in Congress be requested to resign, unless they can support the foregoing resolves, and vote as therein indicated.

Resolved, That the secretary of state be instructed to forward a copy of the foregoing preamble and resolutions to each of our senators and representatives in Congress.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved January 23, 1858.

RALPH P. LOWE.

OFFICE OF SECRETARY OF STATE,
Des Moines, January 23, 1858.

I hereby certify that the foregoing is a true copy from the original roll on file in my office.

ELIJAH SELLS,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 148.

RESOLUTION

OF

THE LEGISLATURE OF IOWA,

IN FAVOR OF

Weekly or semi-weekly mail service from Dyersville to Decorah, in that State.

FEBRUARY 4, 1858.—Referred to the Committee on Post Offices and Post Roads and ordered to be printed.

JOINT RESOLUTION to procure mail facilities.

Resolved by the general assembly of the State of Iowa, That our senators be instructed and our representatives be requested to use their influence to procure weekly or semi-weekly service on mail route No. —, commencing at Dyersville, in Dubuque county, Iowa, thence by way of Poultney, Plumb Spring, Yankee Settlement, Honey Creek, Cox Creek, Volga City, Highland, Elgin, Clermont, &c., to Decorah, in Winneshilk county, Iowa.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved January 26, 1858.

RALPH P. LOWE.

OFFICE OF SECRETARY OF STATE,
Des Moines, January 26, 1858.

I hereby certify that the foregoing is a true copy from the original on file in my office.

ELIJAH SELLS,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 149.

IN THE SENATE OF THE UNITED STATES.

RESOLUTIONS

OF

THE LEGISLATURE OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

INSTRUCTING

The senators and requesting the representatives of that State in Congress to vote against the admission of Kansas into the Union under the Lecompton constitution.

FEBRUARY 8, 1858.—Read and ordered to be printed.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,

JANUARY SESSION, A. D. 1858.

Resolved, That our senators in Congress be instructed, and our representatives be requested, to vote against the admission of Kansas into the Union under the Lecompton constitution.

Resolved, That the secretary of State be, and he hereby is, instructed to transmit a copy of the above resolution to each of the members of Congress from this State, immediately after its passage.

I certify the above to be a true copy of resolutions passed by the general assembly at its present January session.

JAMES R. BARTLETT,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 150.

REPORT

OF THE

SECRETARY OF THE SENATE,

SHOWING

The payments from the contingent fund of the Senate during the year ending December 6, 1857.

JANUARY 19, 1858.—Read and ordered to lie on the table. Motion to print referred to the Committee on Printing.
FEBRUARY 9, 1858.—Report in favor of printing submitted, considered, and agreed to.

OFFICE SECRETARY OF THE SENATE,
January 19, 1858.

The Secretary of the Senate has the honor to report a detailed statement, prepared in obedience to the 20th section of the act of 26th August, 1842, of the payments from the contingent fund of the Senate during the year ending December 6, 1857; the payments having been approved and passed by the Committee to Audit and Control the Contingent Expenses of the Senate.

The amounts of the several appropriations for the contingent expenses of the Senate, unexpended at the close of the year above mentioned, were:

For lithographing and engraving	$5 00
For books	5,551 74
For stationery	1,721 07
For newspapers	1,934 15
For Congressional Globe, and binding the same	43,953 81
For reporting proceedings	16,354 82
For clerks to committees, pages, police, horses and carryalls	33,211 53
For engraving the maps, &c., accompanying reports of surveys for a Pacific railroad route	21,500 00
For expenses of select committees	588 62
For miscellaneous items	9,537 38

Of these balances, $12,416 05 were then in the hands of the Treasurer of the United States, subject to draft, and $121,942 07 in the treasury.

Respectfully submitted,

ASBURY DICKINS.
Secretary of the Senate.

Hon. JOHN C. BRECKENRIDGE,
Vice President of the United States and President of the Senate.

A detailed statement of the disbursements from the contingent fund of the Senate, approved and passed by the Committee to Audit and Control the Contingent Expenses of the Senate, during the year ending December 6, 1857.

To whom paid.	For what object.	Amount.	Total.
Abbott & Warren	Newspapers		$4 00
S. De Camp	Binding 800 copies Appendix to Congressional Globe, 1st and 2d sessions 34th Congress, at 39 cents		312 00
N. Orr & Co	Drawing and engraving on wood 57 cuts to illustrate Report of Pacific Railroad Surveys, 17 at $45, 1 at $15, 15 at $8, 15 at $5, and 9 at $3	$1,002 00	
	Cr., by this amount charged to House of Representatives	501 00	
			501 00
N. Orr & Co	Drawing and engraving on wood 3 cuts to illustrate Report of Lieutenant Warren, 2 at $50 and 1 at $7		107 00
N. Orr & Co	Drawing and engraving on wood 5 cuts to illustrate report of Japan Expedition, 2 at $45, 2 at $8, and 1 at $4	110 00	
	Cr., by this amount charged to House of Representatives	73 33	
			36 67
N. R. Stimson	Newspapers		84 00
W. D. Wallach	do		51 27
W. D. Wallach	Advertising:		
	Proposals for wood and coal	5 25	
	Proposals for stationery	5 50	
			10 75
Adeline Sergeant	Binding 1st and 2d sessions 34th Congress:		
	400 copies Senate miscellaneous documents, in sheep, at 39 cents	156 00	
	38 do do do do	14 82	
	60 copies Senate miscellaneous documents, in calf, at 60 cents	36 00	
	63 do do do	37 80	
	27 do do do	16 20	
	63 copies Senate documents, volume 18, 4to, at $1 20	75 60	
	27 do do do	32 40	
	102 copies Senate Journal, at 60 cents	61 20	
			430 02
J. Lawrence Getz	Newspapers		2 00

David Naar	do		5 00
Andrew Hopkins	do		3 00
R. B. Griffin	Carpenters' work, viz:		
	Putting new rope to water closet	50	
	Repairing reporter's desk, Senate	1 25	
	Scaffolding for hanging drapery	1 50	
	Cleaning carpet strips and making new ones	2 50	
	Mending castor Vice President's chair, Senate	75	
	Removing screen, stationery room	50	
	Making screens for table, office	2 75	
	1 small case for office	4 50	
	Set of shelves for office	3 75	
	Slatting a place for books, folding room	14 50	
	Covering 2 pairs of doors, Senate, and 3 tables, 1 for committee room District Columbia, folding room, and sergeant-at-arms' rooms	7 25	
	62 labels for keys, Senate, 124 blocks for Senators' desks	2 19	
	1 new lock for Senate desk and 1 brush handle	1 00	
	Mending hook and 1 new staple and 3 hinges for door main entrance	1 25	
	Fixing door Senate gallery	25	
	14 new keys for desks, Senate	3 50	
	4 new awls, with eyes, for documents	1 50	
	Mending 13 andirons, Senate	10 50	
	Cleaning and varnishing furniture, viz:		
	R. B. Griffin, 24 days, at $2 50	60 00	
	S. Taylor, 24 days, at $2	48 00	
	W. Godard, 5 days, at $2	10 00	
	2 gallons varnish and 2 quarts turpentine	6 50	
			184 47
E. M. Wilson	13 dozen cloth pen wipers, at $3		39 00
Anna E. McDowell	Newspapers		8 00
Knapp & Peck	do		5 00
Thomas M Day	do		5 00
Greeley & McElrath	do		71 00
J. H. Richard	Engraving on copper 17 quarto plates mammals and reptiles to illustrate the Report of Pacific Railroad Survey, at $45 each	765 00	
	Cr., by this amount paid by House of Representatives	382 50	
			382 50

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
J. H. Richard	Engraving on copper 7 quarto plates of natural history and fishes, to illustrate the Japan Expedition Report, at $45 each	$315 00	
	Cr., by this amount charged to House Representatives	210 00	
			$105 00
Joseph Prestele	Engraving on stone 18 quarto plates, illustrations of botany, to accompany the Report of Pacific Railroad Surveys, at $10 each	180 00	
	Cr., by half the above amount paid by House Representatives	90 00	
			90 00
J. C. McGuire	Binding, viz;		
	10,000 copies Agricultural Report Commissioner of Patents, 1st session 34th Congress, at 12½ cents	1,250 00	
	3,000 copies Mechanical Report, volume 2, at 12½ cents	375 00	
	945 copies Perry's Report, volume 1, at 75 cents	708 75	
			2,333 75
Asbury Dickens	Secretary of the Senate, allowance under the resolution of August 30, 1856	720 00	
W. Hickey	Chief clerk do do	432 00	
L. H. Machen	Principal clerk do do	432 00	
J. H. Nicholson	Principal examining clerk do do	432 00	
Thomas W. Dickins	Clerk do do	360 00	
W J. McDonald	do do do	360 00	
J. C. Fitzpatrick	do do do	360 00	
W. Patton	do do do	360 00	
S. A. Elliot	do do do	360 00	
W. F. Price	do do do	360 00	
S. E. Benson	do do do	360 00	
Y. P. Page	do do do	360 00	
J. L. Clubb	Keeper of the stationery do do	360 00	
D. Conroy	Messenger do do	240 00	
A. M. Rohrer	Son as messenger do do	240 00	
D. R. McNair	Sergeant-at-arms do do	432 00	
J. Holland	Assistant doorkeeper do do	340 00	
J M. Jameson	Postmaster	350 00	

J. B. Smallwood	Assistant postmaster and mail carrier	288 00
E Wallingsford	Son as mail boy	180 00
P. Gorman	do	180 00
M. Titcomb	Superintendent of document room	300 00
B. L. Bogan	Assistant in document room	240 00
A. Treadway	do	240 00
J. Hedrick	Superintendent folding room	300 00
C. S. Jones	Messenger and acting assistant doorkeeper	300 00
J. Bassett	do do	300 00
R. Young	Messenger	240 00
T. Clarke	do	240 00
M. Larner	do	240 00
B. Owens	do	240 00
W. Johnson	do	240 00
J. G. Schott	do	240 00
J. Dobbyn	do	240 00
T. Peters	do	240 00
A. Dodge	do	240 00
T. Wallace	do	240 00
F. D. Queen	do	240 00
W. M. Mann	do	240 00
L. J. Preuss	Ward as messenger	240 00
M. Latruite	Messenger	240 00
J. F. Dooley	do	240 00
J. F. Morton	Superintendent in charge of furnaces	240 00
M. St. John	Assistant superintendent in charge of furnaces	200 00
J. Dodson	Laborer in charge of private passage	200 00
P. Starritt	Laborer	200 00
J. Bryon	do	200 00
R. S. Sproule	Clerk to President pro tempore, from March 5	231 23
H. Madden	Draughtsman	370 00
J. K. Rogers	Clerk of printing records	250 00
S. Masi	Regulating clocks	40 00
John S. Meehan	Librarian, Congress Library	432 00
E. B. Stelle	1st assistant Librarian, Congress Library	360 00
C. H. W. Meehan	2d do do	360 00
C. W. Hinman	3d do do	360 00
R. Brooks	Laborer	200 00
R Keoran	Messenger	240 00

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
George H. Jones	Clerk to President pro tempore to 4th March	$128 77	
G. W. Dant	Fireman in crypt	125 00	
			$16,923 00
Rufus King & Co.	Newspapers		7 00
G. R. Herrick	Clerk to Committee of Finance, allowed under resolution of the Senate, Aug. 30, 1856	250 00	
E. T. Montague	do Foreign Relations do do	250 00	
A. Pickard	do Commerce do do	250 00	
J. F. Callan	do Military Affairs do do	250 00	
C. W. Downing	do Naval Affairs do do	250 00	
F. W. Darden	do Public Lands do do	250 00	
G. L. Sites	do Private Land Claims do do	250 00	
W. F. Wallace	do Indian Affairs do do	250 00	
N. C. Towle	do Claims do do	250 00	
R. A. Matthews	do Revolutionary Claims do do	250 00	
T. P. Morgan	do Judiciary do do	250 00	
S. L. Lewis	do Post Office and Post Roads do do	250 00	
J. W. Nixon	de Roads and Canals do do	250 00	
H. B. Cozzens	do Pensions, (from 1st June) do do	75 96	
J. B. Martin	do District of Columbia do do	250 00	
J. Freize	do Patents and Patent Office do do	250 00	
N. Vedder	do Territories, (from 5th March) do do	152 89	
O. K. Barrell	do Public Buildings do do	250 00	
H. C. Williams	do Retrenchment, (from 27th February) do do	167 30	
G. H. Jones	do Agriculture, (from 5th March) do do	152 89	
J. S. Hacker	do Territories, (to 4th March) do do	97 11	
E. Smoot	Son as page to 4th March	200 00	
A. E. Ragan	do	200 00	
C. Ivey	do	200 00	
J. L. Wirt	do	200 00	
L. Golding	do	200 00	
J. A. Kesley	do	200 00	
I. W. Griffith	do	200 00	

C. Eckloff	do	200 00	
S. A. Caton	do	200 00	
L. E. Brockett	do	177 69	
Jos. Walsh	do	107 69	
B. Lynch	do	84 61	
C. W. C. Dunnington	Police of Capitol	125 00	
J. L. Wirt	do	125 00	
A. K. Arnold	do	125 00	
I. W. Griffith	do	125 00	
J. T. Ball	do	125 00	
S. W. Johnson	do	125 00	
W. Morgan	do	125 00	
W. H. Thompson	do	125 00	
			7,816 14
Adeline Sergeant	Binding, 1st session 34th Congress, viz:		
	63 copies vol. 1, House Reps., Court of Claims, calf, at 60 cents	37 80	
	63 do 2 do do do 60 do	37 80	
	27 do 1 do do do 60 do	16 20	
	27 do 2 do do do 60 do	16 20	
	10 copies Senate Journal, sheep, at 39 cents	3 90	
	10 do Mis. Docs do 39 do	3 90	
	10 copies vol. 1, House Reps., Court of Claims, sheep, at 39 cents	3 90	
	10 do 2 do do do 39 do	3 90	
	10 do 18, Senate Docs, quarto, sheep, at 78 cents	7 80	
	400 do 18 do do do 78 do	312 00	
	38 do 18 do do do 78 do	29 64	
	60 do 18 do do calf $1 20	72 00	
	11 copies Howard's Reports, calf, at 60 cents	6 60	
			551 64
J. D. Baldwin	Newspapers		18 00
D. A. Woodworth	do		1 00
B. H. Richardson	do		4 00
S. Seibert	Engraving on copper 2 charts to accompany Report of Japan Expedition—1 at $790, and 1 at $430	1,220 00	
	Less 25 per cent. reserved	305 00	
		915 00	
	Cr., by this amount charged to House of Representatives	610 00	
			305 00

STATEMENT—Continued.

To whom paid.	For what object.		Amount.	Total.
Raymond, Wesley & Co.	Newspapers			$52 25
Clagett, Dodson & Co.	Carpeting, &c., viz:			
	4½ yards buff linen, at 50 cents		$2 25	
	88 yards tapestry Brussels carpet, at $1 50		132 00	
	144 yards furt. gimp, at 12½ cents		18 00	
	1 piece red worsted binding		37	
	1 pound thread		1 25	
	2 spools cotton, at 5 cents		10	
	153½ yards crimson damask, at $1 25		191 87	
	28¼ yards gimp, at 12½ cents		3 53	
	36 do do		4 50	
	46 yards oil cloth, at $1		46 00	
	193½ yards Brussels carpet, at $1 37½		266 06	
	14½ yards cotton damask, at 37½ cents		5 44	
	1 pound thread		1 25	
	23¼ yards crimson reps. de laine, at $1		23 25	
	96¼ yards velvet carpeting, at $1 37½		132 34	
	3½ yards wide table oil cloth, at $1 50		5 25	
	2 crimson skin mats, at $3 50		7 00	
			840 46	
	Cr., by 43 yards Brussels carpet, at $1 37½	$59 13		
	19 yards tapestry carpet, at $1 50	28 50		
	90 yards crimson damask, at $1 25	112 50		
	24¾ do do	30 94		
			231 07	
				609 39
John A. Ryerson	Newspapers			4 00
John Pettibone	83 bushels ice, at 50 cents per bushel			41 50
Hapgood & Adams	Newspapers			2 00
S. Myers & Son	do			2 00
Bowe & Allison	do			1 50

S. DeCamp	Binding 1,200 copies Appendix to Congressional Globe, 1st and 2d sessions 34th Congress, at 39 cents		468 00
Carpenter & Law	Newspapers		2 00
Harris, Fairbanks & Co	do		12 00
Holden & Wilson	do		5 00
Sarony & Co	Lithographing and printing in colors 56,400 copies, each, of 3 plates, "Bull," "Cow," and "Ox," to illustrate Report of Commissioner of Patents on Agriculture, for 1855, at $3 75 per 100		6,345 00
P. S. Duval & Co	Transferring and printing 12,400 copies, each, of 10 quarto plates of botany, to illustrate the Report of Pacific Railroad Surveys, (124,000) at 60 cents per 100		744 00
John R. French & Co	Newspapers		2 00
McFarland & Jenks	do		2 00
James Ackerman	Printing from stone 6,400 copies of outline map of the United States, exhibiting the military posts, to accompany Senate Ex. Doc. No. 96, 1st session 34th Congress, at $1 25 per 100		80 00
Adeline Sergeant	Binding, 1st and 2d sessions, 34th Congress, viz:		
	438 copies, vol. 8, Senate Docs., sheep, at 39 cents	170 82	
	150 do 8 do calf, at 60 cents	90 00	
			260 82
S. T. Taylor	Newspapers		5 00
W. F Bang & Co	do		8 00
J. C. McGuire	Binding, viz:		
	10,000 copies Agricultural Report Commissioner Patents, 1st session 34th Congress, at 12½ cents	1,250 00	
	945 copies Japan Report, 3d volume, at 75 cents	708 75	
	445 copies Pacific Railroad Report, volume 1, at 75 cents	333 75	
			2,292 50
George W. Dant	Attending furnaces in crypt for December, 1856, 31 days, at $3 per day	93 00	
	Cr., by one-half paid by House of Representatives	46 50	
			46 50
H. Dodson	Services as laborer, carrying wood, &c, for month of December, 1856, 31 days, at $1 20 per day		37 20
D. R. McNair	Hire of 4 horses, for use of Senate for December, 1856, 31 days, at $2 per day	248 00	
	Hire of 2 saddle horses same time, for messengers, at $1 50 per day each	93 00	
			341 00
D. Conroy	Hire of horse, for use of office of Secretary of the Senate, for December, 1856, 31 days, at $1 50 per day		46 50
C. W. C. Dunnington	Police of Capitol for December, 1856.	72 50	
J. L. Wirt	do do	55 00	

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
A. K. Arnold	Police of Capitol for December, 1856	$55 00	
J. W. Griffith	do do	55 00	
James T. Ball	do do	55 00	
S. J Johnson	do do	55 00	
William Morgan	do do	55 00	
W. H. Thompson	do do	55 00	
			$457 50
Ann E. Ragan	For son, as page for December, 1856, 31 days, at $2 40 per day	74 40	
C. Ivey	do do do	74 40	
John L. Wirt	do do do	74 40	
L. Golding	do do do	74 40	
J. M. Kesley	do do do	74 40	
J. W. Griffith	do do do	74 40	
C. Eckloft	do do do	74 40	
S. A. Caton	do do do	74 40	
L. E. Brockett	do do do	74 40	
J. Walsh	do do do	74 40	
B. Lynch	do do do	74 40	
			818 40
E. T. Montague	Clerk to Committee on Foreign Relations, for December, 1856, 31 days, at $6 per day		186 00
J. F. Callan	Clerk to Committee on Military Affairs do do		186 00
C. W. Downing	Clerk to Committee on Naval Affairs do do		186 00
Geo. L. Stiles	Clerk to Committee on Private Land Claims do do		186 00
W. F. Wallace	Clerk to Committee on Indian Affairs do do		186 00
N. C. Towle	Clerk to Committee on Claims do do		186 00
R. A Matthews	Clerk to Committee on Revolutionary Claims do do		186 00
T. P. Morgan	Clerk to Committee on the Judiciary do do		186 00
S. L. Lewis	Clerk to Committee on Post Office and Post Roads do do		186 00
J. B. Martin	Clerk to Committee on District of Columbia do do		186 00
J. W. Nixon	Clerk to Committee on Roads and Canals do do		186 00
J. Freize	Clerk to Committee on Patents do do		186 00
N. Vedder	Clerk to Committee on Territories do do		186 00

G. H. Jones	Clerk to Committee on Agriculture ... do ... do		186 00
G. W. Frankland	1 large size American ensign, 20 by 11 feet, at $1 50 per foot		30 00
John A Haven	Newspapers		3 00
Thomas S. Clark	do		2 00
R. B. Griffin	Carpenter's work, viz:		
	Mending 4 chairs, Senate	3 75	
	Fixing window over chandeliers	75	
	Mending lock, office	25	
	1 letter rack, post office	1 75	
	Mending lo ɪk, Senate	25	
	Putting lock and staple on door in vestibule	50	
	1 lock for packing box	75	
	1 key for reporter's desk	25	
	Mending pair tongs, folding room, and 1 key for night lock	1 75	
	Covering stands, committee room, and 1 brass button for wood closet	2 75	
	1 packing box, Senate	2 75	
	2 new keys for table, Vice President's chamber, and repairing drawers	2 25	
	Cutting away boards for stove, folding room, and boxing up flue	1 00	
	1 new key for book room	75	
	Fixing lock, Naval Committee room	50	
	Mending 8 chairs, committee rooms	6 00	
	2 keys, Committee on the Judiciary	50	
	Removing sash back of Vice President's chair, Senate	25	
	Mending 1 chair, and covering with hair cloth	3 50	
	1 brass spigot for water cooler	2 25	
	Mending spigot on north side	50	
	Repairing desk, Pension Committee room	1 00	
	Fixing up case and cutting out shelves, Printing Committee room	1 50	
	Putting knobs on drawer, office, and knobs on drawer, Printing Committee room	1 00	
	Pigeon holes in drawer, Committee on Indian Affairs, and 1 new key	2 50	
	1 box for Senate	2 75	
	Hanging door, water closet	75	
	1 lock for packing box, and opening box	75	
	Putting staple and hook on gallery door	50	
	430 file sticks for Senate	5 25	
	3 packing boxes, at $2 75	8 25	
	1 key for reporter's desk, Senate	25	
	Putting partition in packing box, and 1 new key for box	1 50	
	1 sign for post office	2 75	

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
R. B. Griffin—Continued	Carpenter's work, viz:		
	1 door key for attic	$0 75	
	Mending chair, Vice President's chamber	1 00	
	2 dozen rollers for folding room	2 00	
	1 lock for reporter's desk, Senate	75	
	1 lock for drawer, Committee on Printing, and easing drawers	1 50	
	Securing iron strips in gallery	50	
	2 wood hods, Senate	7 00	
	15 backing boxes, Senate, at $2 75	41 25	
			$116 50
Jacob Dodson	Washing 503 towels, at 75 cents per dozen		31 43
Clagett, Newton, May & Co	To cash paid for fans	1 50	
	2 pieces German roll towelling	2 00	
	1 yard black velvetine	75	
	½ yard Beaver cloth	1 75	
	2¼ yards blue cloth, at $3	6 75	
	¾ yard blue cloth	2 25	
	2 dozen towels, at $3	6 00	
	6 pieces black crape, at $5	30 00	
			51 00
John C. Rives	For excess of 890 pages on each copy of the Congressional Globe and Appendix taken by the Senate for the 1st and 2d sessions of the 34th Congress, at the rate of "one cent for every five pages of that work, exceeding 3,000 pages for a long session, or 1,500 pages for a short one."—(See Laws U. S., 1st session, 34th Congress.) The work made 3,890 pages, and the Senate took 5,766 copies		10,263 48
James Burgess	Sweeping chimneys, for the years 1852, 1853, and 1854, $101 40 each year, as per certificate of C. W. C. Dunnington		304 20
S. De Camp	Binding 800 copies Appendix to Congressional Globe, 1st and 2d session 34th Congress, at 39 cents		312 00
S. De Camp	Stationery, viz:		
	Ruling 5 reams letter paper, at 75 cents	3 75	
	Ruling 2 reams of note, at 75 cents	1 50	

	Lettering 3 vols. "Estimates" Committee on Finance, at 25 cents	75	
	8 quires full morocco	5 00	
	do	5 00	
	Lettering title for trunk, Committee on Patents	50	
	Executive Journal, full morocco, 1856–'57	5 00	
	Side lettering for same	50	
	4 quires cap index	1 50	
	2 do	1 50	
	5 quires cap	1 50	
	Side lettering for same	50	
	Cutting index through book for Committee on Claims	1 00	
	Lettering 8 vols. Adams' Works	2 00	
	4 quires cap	1 50	
	Side lettering for same	50	
	Lettering 3 volumes Statutes at Large	75	
	Ruling 1 ream 4to post	75	
	Lettering 26 volumes Decisions Supreme Court for Committee of Claims	6 50	
	5 quires cap, journal Committee on Naval Affairs	1 50	
	Side lettering for same	50	
			42 00
S. DeCamp	Binding, viz:		
	Binding 54 volumes Statutes at Large, in muslin backs, at 10 cts	5 40	
	3 volumes Estimates 1858, at 62½ cts	1 87½	
	1 volume Statutes at Large, 1853–'5	75	
	2 volumes Statutes at Large, 1855–'6	1 50	
			9 52
A. Sergeant	Binding, 1st and 2d session 34th Congress, viz:		
	438 copies volume 5 Sen. Doc., sheep, at 39 cents	170 82	
	60 copies volume 5 Sen. Doc., calf, at 60 cents	36 00	
			206 82
F. B. Gilbert	Newspapers		6 00
W. H. Harrover	Stoves, &c., viz:		
	Putting up stove in document room	2 00	
	Cleaning same	1 00	
	1 large egg stove	14 00	
	38 pounds sheet zinc, at 18 cts	6 84	
	1 fireboard, 19 pounds, at 20 cts	3 80	
	1 extra joint stove-pipe	75	
	1 cast iron air-tight stove	12 00	

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
W. H. Harrover—Continued	1 Russia iron fireboard, 17 pounds, at 30 cts	$5 10	
	5 pounds iron stove-pipe, at 30 cts	1 50	
	1 damper	25	
			$47 24
Campbell & Coyle	Hardware, viz:		
	1 dozen hand scrubbers	4 80	
	Repairing truck, $3; 2 paper knives, 25 cts	3 25	
	1 dozen paint brushes, $3 75; 1 dozen palm leaf fans, $3	6 75	
	1 basket, $1; brushes 50 cts.; 1 looking glass, $3	4 50	
	1 box oeilets	38	
	Water cooler, (10 gallons,) ladies' gallery	13 00	
	Water cooler, (8 gallons,) folding room	10 00	
	3 paper knives	38	
	Knife stone, 10 cts.; awl, 12 cts	22	
	12 papers British lustre	63	
	1½ dozen hearth bru hes, at $7 50	11 25	
	2 pairs steel shovel and tongs, $16 25; 2 dozen scrubbers, $9 50	25 75	
	2 pairs candlesticks, at $6 50	13 00	
	Hone	1 87	
			95 78
Nairn & Palmer	5 pounds chloride lime, $1; fine sponge, 50 cts	1 50	
	3 pounds wool sponge, $6; 2 pounds fine medium sponge, $6	12 00	
	2 dozen honey soap, $5; 1 sponge, 50 cents	5 50	
	White gum arabic, $1; 2 large hair brushes, $3 50	4 50	
	5 pounds chloride lime, $1; 10 ditto, $2	3 00	
	1½ dozen honey soap, $3 75; 1½ dozen small, $1 87½	5 63	
	5 pounds chloride lime, $1; ½ dozen English hair brushes, at $18	10 00	
	½ dozen dressing combs, $2 25; ½ dozen honey soap, $2 50	4 75	
	Hj. gum arabic, best, $1; 5 pounds chloride lime, $1	2 00	
			48 88
James G. Berret	Postmaster City of Washington, excess of postage on letters and packages addressed to members of the Senate, from October 1 to December 31, 1856		122 60

W. H. Dougal	Engraving on copper 6 quarto plates of fishes, to illustrate Report of Japan Expedition, at $45 each	270 00	
	Cr. By this amount charged to and paid by House of Representatives	180 00	
			90 00
W. Roberts	Engraving on wood 4 pages of illustrations to accompany Report of Commissioner of Patents on Agriculture, for 1855, at $35 per page	140 00	
	Cr. By this amount charged to House of Representatives	112 00	
			28 00
S. Duvall & Co	Transferring and printing 6,400 copies, each of 17 quarto plates of views to illustrate Report of Major Emory on Mexican boundary survey, (108,800 plates,) at 60 cents per 100		652 80
P. S. Duval & Co	Engraving "contingent" and "compensation" checks	36 00	
	Paper for same, and printing 1,000 of each	25 00	
		61 00	
	Deduct on charge for engraving	9 00	
			52 00
B. E. Hale	Newspapers		3 60
John A Haven	do		6 00
Charles Dean	29 pounds bagging twine, at 50 cents	14 50	
	150 pounds large twine, at 35 cents	54 25	
			68 75
John Conroy	For services attending in place of D. Conroy, messenger, while sick, 21 days in December, 1856, and 4 days in January, 1857—25 days, at $2 per day		50 00
E. Smoot	For services of her son George, attending in place of S. S Smoot, page, while sick, 8 days in February, 1 day in March, 8 days in July, and 2 days in December, 1856—19 days, at $1		19 00
A. Sergeant	Binding. 1st session 34th Congress, viz:		
	438 copies volume 15, Senate documents, in sheep, at 39 cents	170 82	
	60 do 15 do in calf 60 cents	36 00	
	63 do 15 do do 60 cents	37 80	
	27 do 15 do do 60 cents	16 20	
	63 do 15 do do 60 cents	37 80	
	27 do 15 do do 60 cents	16 20	
	27 do 11 do do 60 cents	16 20	
	30 volumes, (10 each of 5, 8, and 15,) in sheep, at 39 cents	11 70	
			342 72
James Ackerman	Transferring and printing 12,400 copies, each, of 6 plates of botany to illustrate Report of Pacific Railroad Surveys—74,400 plates, at 60 cents per 100		446 40

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
J. C. McGuire	Chairs, &c., viz:		
	8 oak arm chairs	$28 00	
	4 do	14 00	
	6 do	15 00	
	1 revolving chair (Committee on Judiciary)	14 00	
	6 oak C. S. chairs	15 00	
	12 C. S stools	15 00	
	4 feather dusters	7 00	
	2 chamois skins	1 00	
	6 oak chairs	15 00	
	5 dozen spittoons	22 50	
			$146 50
Robert Morris	650 copies Congressional Directory for 3d session 34th Congress, at 25 cents each		162 50
F. W. Darden	Clerk to Committee on Public Lands, for December, 1856—31 days, at $6 per day		186 00
Beals, Greene & Co	Newspapers		12 00
L. D. Starke	do		5 00
A. G. Hayden	Clerk to Committee on Commerce, for December, 1856—31 days, at $6 per day		186 00
Van Jugen & Snyder	Engraving on wood 5 pages of insects, &c., to illustrate the Report of the Committee of Patents, on agriculture, for 1855, at $35 per page	175 00	
	Cr. by this amount charged to House of Representatives	140 00	
			35 00
M. A. Goodfellow	Clerk to Committee on Pensions, for December, 1856—31 days, at $6 per day		186 00
T. B. Tilden	1 copy Mitchell's Atlas, for Committee on Foreign Relations		15 00
A. Hoen & Co	Transferring and printing 11,400 copies, each, of 24 maps and sketches to accompany Coast Survey Report for 1855, at $1 16¼ per 100		3,180 60
Ryan & Co	Newspapers		2 00
A. Sergeant	Binding, 1st session 34th Congress, viz:		
	438 copies volume 11, Senate documents, in sheep, at 39 cents	170 82	
	63 do 11 do in calf, at 60 cents	37 80	
	63 do 3 do do 60 cents	37 80	
	60 do 11 do do 60 cents	36 00	
			282 42

Franck Taylor	Newspapers		20 00
	1 ream finest hand-made English laid cap		9 50
A. Sergeant	Binding, 1st session 34th Congress, viz:		
	400 copies volume 2, Senate documents, in sheep, at 39 cents	156 00	
	400 do 3 do do 39 cents	156 00	
			312 00
John Pettibone	87 bushels ice, from December 19, 1856, to January 22, 1857, at 50 cents		43 50
W. C. Bryant & Co	Newspapers		37 00
A. Sergeant	Binding, 1st and 2d sessions, 34th Congress, viz:		
	63 copies volume 2, Senate documents, in calf, at 60 cents	37 80	
	27 do 2 do do 60 cents	16 20	
	27 do 3 do do 60 cents	16 20	
	60 do 2 do do 60 cents	36 00	
	60 do 3 do do 60 cents	36 00	
	106 volumes, (volumes 2, 3, and 11,) in sheep, at 39 cents	41 34	
			183 54
Hugh Lochrey	Taking down, and removing and setting up again, 3 monuments (to Hon. Henry Clay, Hon. J. C. Calhoun, and Hon. Chester Ashley) in the Congressional burying ground, which became necessary in consequence of a change in the plan of said ground in 1856, at $25		75 00
J. Stryker	Newspapers		5 00
P. H. Carney	do		6 00
J. A. Smith	do		2 00
Sarony & Co	Drawing and printing in colors 6,400 copies, each, of 12 chromo-lithographic plates to illustrate Report of Mexican Boundary Survey, (76,800 plates,) at $6 per 100		4,608 00
S. De Camp	Binding 1,095 copies of Appendix to Congressional Globe, 1st and 2d sessions, 34th Congress, at 39 cents		427 05
G. W. Dant	Fireman in crypt, for January, 1857, 31 days, at $3 per day	93 00	
	Cr., by half paid by House of Representatives	46 50	
			46 50
D. R. McNair	Hire of 4 horses and wagons, for January, 1857, 31 days, at $2	248 00	
	Hire of 2 horses same time, at $1 50	93 00	
			341 00
D. Conroy	Hire of horse for use of Senate, for January, 1857, 31 days, at $1 50 per day		46 50
H. Dodson	Laborer, for January, 1857, 31 days, at $1 20 per day		37 20
C. W. C. Dunnington	Police of Capitol, for January, 1857	72 50	
J. L. Wirt	do do	55 00	
A. K. Arnold	do do	55 00	
T. W. Griffith	do do	55 00	

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
S. J. Johnson	Police of Capitol, for January, 1857	$55 00	
J. T. Ball	do do	55 00	
W. H. Thompson	do do	55 00	
W. Morgan	do do	55 00	
			$457 50
A. E. Ragan	Son, as page, for January, 1857—31 days, at $2 40 per day		74 40
C. Ivey	do do do		74 40
J. L. Wirt	do do do		74 40
L. Golding	do do do		74 40
J. A. Kesley	do do do		74 40
J. W. Griffith	do do do		74 40
C. Eckloff	do do do		74 40
S. A. Caton	do do do		74 40
L. E. Brockett	do do do		74 40
J. Walsh	do do do		74 40
B. Lynch	do do do		74 40
E. T. Montague	Clerk Committee on Foreign Relations, for January, 1857, 31 days, at $6 per day		186 00
A. G. Hayden	do Commerce do do		186 00
J. F. Callan	do Military Affairs do do		186 00
C. W. Downing	do Naval Affairs do do		186 00
F. W. Darden	do Public Lands do do		186 00
G. L. Sites	do Private Land Claims do do		186 00
W. F. Wallace	do Indian Affairs do do		186 00
N. C. Towle	do Claims do do		186 00
R. A. Matthews	do Revolutionary Claims do do		186 00
T. P. Morgan	do Judiciary do do		186 00
S. L. Lewis	do Post Office and Post Roads do do		186 00
J. W. Nixon	do Roads and Canals do do		186 00
M. A. Goodfellow	do Pensions do do		186 00
J. Freise	do Patents do do		186 00
N. Vedder	do Territories do do		186 00
G. W. Jones	do Agriculture do do		186 00

John C. Rives	Reporting and publishing the proceedings and debates of the Senate from December 2, 1856, to January 28, 1857, 453$\frac{187}{400}$ columns, at $7 50		3,404 67
Greene & Greene	Newspapers		3 00
C. W. Boteler	2 dozen tumblers	4 50	
	2 do	4 50	
	1 pair andirons	5 00	
	6 blue pitchers	4 50	
			18 50
Adeline Sergeant	Binding, 1st and 2d sessions 34th Congress, viz:		
	400 copies vol. 10, Senate Docs., sheep, at 39 cents	156 00	
	63 do do calf, at 60 cents	37 80	
	27 do do do	16 20	
	63 do 15, part 6, House Ex. Doc. 133, quarto, calf, at $1 20	75 60	
	27 do do do do	32 40	
			318 00
A. O. P. Nicholson	Advertising, viz:		
	Proposals for wood and coal	4 50	
	Proposals for binding	5 00	
			9 50
S. Foot	Newspapers		40 00
J. C. McGuire	Binding, viz:		
	2,000 copies Medical Statistics, 1st session 34th Congress, at 75 cents	1,500 00	
	10,000 copies Patent Office Report, (Agricultural,) at 12½ cents	1,250 00	
	5,000 copies Finance Report, 3d session 34th Congress, at 12½ cents	625 00	
			3,375 00
J. B. Martin	Clerk to Committee on the District of Columbia, for January, 1857, 31 days, at $6		186 00
J. T. Benedict	Newspapers		4 00
C. Lasselle	do		16 00
Gales & Seaton	Daily National Intelligencer for 1856, for office Secretary Senate	10 00	
	do do do bound, 2 parts	17 00	
			27 00
J. Scott Roe	Stationery, viz:		
	6 dozen 8vo memorandum books, at $6 75	40 50	
	1¼ dozen standishes, at $26 25	32 81¼	
	6¾ dozen Fry's glass inkstands, at $7 50	50 62½	
	6 dozen 12mo memorandum books, at $4 50	27 00	
	10,000 parchment letter envelopes, at $7	70 00	
	9,200 parchment official envelopes, at $11	101 29	
			322 13

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
F. Y. Naylor	1 candle screen stand for sealing letters		$1 00
S. Seibert	Engraving on copper 15 charts to accompany Report of Japan Expedition	$6,312 00	
	Deduct this amount paid on the above, being 75 per cent. on his contract	4,734 00	
		1,578 00	
	Credit, by this amount charged to House of Representatives	1,052 00	
			526 00
S. Seibert	Engraving on copper (4 pieces) chart of the coast of China and Japan, to accompany Report of Japan Expedition	1,175 00	
	Less 25 per cent. reserved	293 75	
		881 25	
	Credit, by two-thirds of above charged to House of Representatives	587 50	
			293 75
Y. P. Page	Cash paid for hack hire, freight, &c., for use of Senate		20 00
James Ackerman	Lithographing and printing in colors 6,400 copies, each, of 2 diagrams to accompany the Report of the Japan Expedition		332 80
R. B. Griffin	Carpenter's work, viz:		
	Mending chair in Senate	75	
	Putting lock on door, document room	1 75	
	Stripping door, Secretary's office	75	
	1 ruler for Committee Public Lands	25	
	Repairing lock and new key for Committee on Military Affairs	75	
	Putting top on box, Senate	1 00	
	Repairing lock staple on door, Senate	50	
	Repairing 2 screens in reception room and mending chair	2 50	
	Mending bell in Secretary's office	75	
	2 keys for Committee on Public Lands	50	
	3 rulers for stationery room	75	
	2 new keys for Senate and 1 for Judiciary Committee room, and mending lock	1 00	
	Listing 3 windows, Senate	50	
	1 mortise lock, with white mineral knob, for Committee Judiciary, and mending chair	3 75	

	Fixing door of post office and carpet strip	75	
	Screwing down iron rail and fixing door in gallery and in ante-chamber	1 25	
	Fixing water cooler north side Senate	50	
	Label for desk and mending chair	1 25	
	1 new lock for case, office	1 00	
	Repairing lock and new key Secretary's tables, Senate	1 00	
	Mending lock, 1 new key for folding room, and fixing door and two staples, south door, Senate	1 50	
	23 boxes for Senate	63 25	
	Making large pine stand for books, folding room	85 60	
			171 60
A. Sergeant	Binding, viz:		
	400 copies vol. 19, part 1, Senate Docs., 4to, sheep, at 78 cents	312 00	
	90 do 19 do calf, at $1 20	108 00	
	38 do 10 do sheep, at 39 cents	14 82	
			434 82
N. R. Stimson	Advertising, viz:		
	Proposals for engraving	9 00	
	Steel plate printing	9 00	
			18 00
G. R. Smith	Newspapers		5 00
G. R. Smith	do		5 00
J. H. Richard	Engraving 8 quarto copper plates, mammals and reptiles, to illustrate Report of Pacific Railroad Surveys, at $45 each	360 00	
	Credit, by half the above amount paid by House of Representatives	180 00	
			180 00
A. S. Abell & Co.	Newspapers		28 00
A. P. Blakeslee	do		2 80
J. M. Hollingsworth	Plate paper, viz:		
	$67\frac{4}{20}$ reams for 10 plates for Pacific Railroad Report, at $12	806 40	
	$39\frac{15}{20}$ do 6 do do	477 00	
	$26\frac{10}{20}$ do 4 do do	318 00	
	$39\frac{15}{20}$ do 6 do do	477 00	
	53 do 8 do do	636 00	
	$26\frac{10}{20}$ do 4 do do	318 00	
	$39\frac{15}{20}$ do 6 do do	477 00	
	53 do 8 do do	636 00	
			4,145 40

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
S. Hein	General disbursing agent Coast Survey Office.—For the Senate's proportion of the cost of engraving 60 sketches accompanying Report Superintendent Coast Survey for 1855		$2,150 00
H. C. Williams	Clerk Committee on Retrenchment, from 21st to 30th of August, 1856, 10 days, at $6		60 00
M. Gross	Newspapers		2 00
S. De Camp	Ruling, &c., viz:		
	Check book, contingent	$1 50	
	Check book, salary	1 50	
	Lettering 4 volumes American Almanac	1 00	
	Lettering 2 portfolios, 1 memorandum book, and trunk	62½	
	Do do	62½	
	Do do	62½	
	Ruling demy paper	75	
	Ruling 3 quires paper and binding	4 50	
	Lettering President's Message, Committee on Finance	25	
	Lettering Deveroux's Reports, Court of Claims	25	
	Ruling and binding 4 quires cap, Senate folding room	2 00	
	Side lettering for same	50	
	Lettering Receipts and Expenditures, 1855	25	
	Lettering 2 portfolios, 1 memorandum book, and trunk	62½	
	Lettering 1 portfolio	12½	
	6 quires demy, ruling and binding, Committee on Printing	9 00	
	Morocco projecting index for same	2 00	
	Lettering title, office Secretary of the Senate	25	
	Ruling 1 ream cap for journal	2 50	
	Lettering Report of Secretary of War, Committee on Military Affairs	25	
	Lettering 2 portfolios, 1 memorandum book, and name for trunk	62½	
	Ruling 6 reams quarto post, at 75 cents	4 50	
	Ruling 1 ream cap	1 00	
	Binding 8 quires cap	2 00	
	Side lettering for same	50	
	Binding 3 quires cap	1 50	

	3 morocco lettered projecting tabs	75	
	Binding 10 quires cap	2 00	
	Side lettering for same	50	
			42 50
Joseph Prestele	Engraving, on stone, 12 plates of "cactaceæ," and 8 plates of plants to illustrate Report of Pacific Railroad Survey—12 at $13 each, and 8 at $10 each	236 00	
	Cr., by half the above charged to House of Representatives	118 00	
			118 00
S. Adams	Newspapers		17 00
G. W. Mahon	do		2 00
H. S. Hacker	Clerk to Committee on Territories, from March 1 to 4, 1856, inclusive, at $6 per day		24 00
Adeline Sergeant	Binding, 1st session 34th Congress—		
	400 copies vol. 1 Senate Documents, sheep, at 39 cents	156 00	
	38 do do do	14 82	
	10 do do do	3 90	
	10 do do do	3 90	
	10 copies vol. 10, part 1, Ho. Ex., quarto, sheep, at 78 cents	7 80	
	10 copies vol. 15, part 6 do	7 80	
	10 copies vol. 1 Senate Documents, calf, at 60 cents	37 80	
	27 do do do	16 20	
	63 copies vol. 10 Ho. Ex. Documents, quarto, calf, at $1 20	75 60	
	27 do do do	32 40	
	38 copies vol. 19, part 1, Senate, sheep, at 78 cents	29 64	
			385 86
Thomas Ewbank	4 engraved wood cuts of illustrations to accompany Report of Lieutenant Gilliss' Astronomical Expedition to Chili, at $15 each $60 00		
	4 drawings of ditto for engraver, at $5 each 20 00		
		80 00	
	Cr., by half of above charged to House of Representatives	40 00	
			40 00
J. Severns	Advertising proposals for steel plate engraving in Philadelphia Argus		7 50
P. S. Duval	Transferring and printing 12,400 copies, each, of 4 plates of "fossils" to illustrate Report of Pacific Railroad Survey—49,600 plates, at 60 cents per 100		297 60
Holden & Wilson	Newspapers		5 00
T. G. Pratt	do		42 17
Cannon & Spencer	do		6 00
A. Hoen & Co	Transferring and printing 11,400 copies, each, of 7 maps to accompany the Coast Survey Report for 1855, at $1 16¼ per 100		927 67

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
P. S. Duval	Engraving and printing 1,400 copies, each, of 3 maps to accompany Senate Executive Document No. 76, 1st session 34th Congress		$420 00
	Engraving and printing 1 map, 1,400 copies, to accompany Senate Executive Document No. 60, 1st session 34th Congress		150 00
S. De Camp	Binding 1,194 copies Globe, part 1, 1st session 34th Congress; and 1,008 copies ditto, part 2—2,202 vols., at 39 cents		858 78
M. Titcomb	Newspapers		37 50
J. Kingsland & Son	Map paper, viz:		
	7 reams, 25 by 25 inches, 192 pounds, at 20 cents	$38 40	
	6 reams, 33½ by 37½ inches, 331 pounds; 3 reams, 17½ by 27½ inches, 47 pounds; 3 reams, 9 by 11 inches, 14 pounds—392 pounds, at 20 cents	78 40	
	3 reams, 28 by 38 inches, 140 pounds, at 20 cents	28 00	
	24¼ reams, 20 by 28 inches, 596 pounds, at 20 cents	119 20	
	6,316 pounds, at 20 cents	1,263 20	
			1,527 20
D. R. McNair	Hire of 4 horses and wagons, for February, 1857, 28 days, at $2 per day each	228 00	
	Hire of 2 saddle horses same time, at $1 50	84 00	
			308 00
C. W. C. Dunnington	Police of Capitol, for February, 1857	72 50	
J. L. Wirt	do do	55 00	
A. K. Arnold	do do	55 00	
J. W. Griffith	do do	55 00	
S. J. Johnson	do do	55 00	
Jas. T. Ball	do do	55 00	
W. H. Thompson	do do	55 00	
W. Morgan	do do	55 00	
			457 50
A. E. Ragan	Son, as page, for February, 1857, 28 days, at $2 40 per day	67 20	
C. Ivey	do do do	67 20	
J. L. Wirt	do do do	67 20	
L. Golding	do do do	67 20	
J. A. Kesley	do do do	67 20	

J. W. Griffith	do do do	67 20	
C. Eckloff	do do do	67 20	
S. A. Caton	do do do	67 20	
L. E. Brockett	do do do	67 20	
J. Walsh	do do do	67 20	
B. Lynch	do do do	67 20	
			739 20
D. Conroy	Hire of horse for use of the Senate, for February, 1857, 28 days, at $1 50 per day		42 00
H. Dodson	Services as laborer, for February, 1857, 28 days, at $1 20 per day		33 60
E. V. Campbell	Services as day watchman in crypt of Capitol, for January and February, 1857, at the rate of $800 per annum		66 66
John Pettibone	80 bushels ice, at 50 cents per bushel		40 00
W. M. Morrison & Co	Books, &c.:		
	1 Cushing's "Law and Practice," &c	4 50	
	Do do	4 50	
	1 Curtiss' Decisions of the Supreme Court, 22 volumes	66 00	
	1 Alden's Index, 3 volumes	18 00	
	1 Deveroux's Reports of the Court of Claims	2 50	
	Do do	2 50	
			98 00
G. W. Frankland	Repairing 2 American ensigns		8 00
J. C. McGuire	Binding, viz:		
	1,000 copies Medical Statistics, at 75 cents per volume	750 00	
	10,000 copies President's Message and Documents, 3d session 34th Congress, part 1, at 12½ cents	1,250 00	
	5,000 copies of same, part 2, at 12½ cents	625 00	
	5,000 copies Patent Office Report, (Agricultural,) 1st session 34th Congress, at 12½ cents	625 00	
			3,250 00
N. Vedder	Clerk to Committee on Territories, for February, 1857, 28 days, at $6 per day		168 00
J. B. Thompson	Newspapers		50 00
B. H. Richardson & Co	Advertising proposals in the "Baltimore Republican:"		
	Engraving and lithographic printing	9 00	
	Engraving for steel plate printing	9 00	
			18 00
Geo. W. Dant	Attending furnaces in crypt from February 1 to March 3, inclusive, 31 days, at $3	93 00	
	Cr., by one-half paid by House of Representatives	46 50	
			46 50
C. T. James	Newspapers		45 00

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
E. T. Montague	Clerk Committee on Foreign Relations, from Feb. 1 to March 3, 1857, 31 days, at $6		$186 00
J. F. Callan	do Military Affairs do do		186 00
C. W. Downing	do Naval Affairs do do		186 00
G. L. Sites	do Private Land Claims do do		186 00
W. F. Wallace	do Indian Affairs do do		186 00
N. C. Towle	do Claims do do		186 00
R. A. Matthews	do Revolutionary Claims do do		186 00
T. P. Morgan	do Judiciary do do		186 00
S. L. Lewis	do Post Office and Post Roads do do		186 00
J. W. Nixon	do Roads and Canals do do		186 00
J. B. Martin	do District of Columbia do do		186 00
J. Frieze	do Patents, &c do do		186 00
G. H. Jones	do Agriculture, from February 1 to 20, 1857, 20 days, at $6 per day		120 00
Lewis Jones	do Agriculture, from February 21 to March 3, 1857, 11 days, at $6		66 00
W. A. Kennedy	15 days' services in office Secretary Senate, engrossing and enrolling, at $4 80 per day		72 00
O. Tweedy	15 do do do		72 00
W. J. McCormick, jr	13 do do do		62 40
S. Evans	15 do do do		72 00
D. Ridgely	10 do do do		48 00
E. Downing	12 do do do		57 60
J. Owner	13 do do do		62 40
W. Carr	15 do do do		72 00
Van Ingen & Snyder	Engraving 1 wood cut diagram of Senate United States		20 00
James Ackerman	Transferring and printing 12,400 copies, each, of 8 plates cactaceæ, to illustrate the Report of Pacific Railroad Survey, 99,200 plates, at 60 cents per 100		595 20
Beverley Tucker	Publishing in the Washington Sentinel the debates and proceedings of the Senate, under resolution of Senate of August 30, 1856, 410½ columns, at $4 50		1,846 50
J. P. McKean	Subdividing, trimming, and inserting 528,000 plates and maps in 17,000 copies of Emory's Report, under resolution of Senate of March 3, 1857, at 35 cents per 100	$1,848 00	
	Deduct this sum allowed for subdividing, paid August 31, 1852	181 50	
			1,666 50

Gales & Seaton	Publishing in the National Intelligencer the debates and proceedings of the Senate, under the resolution of the Senate of August 30, 1856, 2,30 columns, at $4 50 per column		10,350 00
S. Masi	Cleaning and attending clocks for 3 months ending March 1, 1857		50 00
C. W. C. Dunnington	Amount paid to 23 extra police officers, employed by authority of committee of arrangements on the 4th of March, 1857, at $3 each		63 00
Carlton & Porter	Newspapers		3 50
Clason, Huntsman & Co	do		13 00
G. N. Fitch	do		4 41
A. G Hayden	Clerk Committee on Commerce from February 1 to March 3, 1857, inclusive, 31 days, at $6 per day		186 00
W. H. Dougal	Engraving on copper 10 quarto plates of fishes, to illustrate Report Pacific Railroad Surveys, at $45 each	450 00	
	Cr., by half the above charged to House Representatives	225 00	
			225 00
R. B. Griffin	Carpenters' work, viz:		
	1 new key (office) and 1 staple	37	
	Making 4 mahogany blocks for desks in Senate, and fixing spigot	2 75	
	Screwing iron strips to railway in gallery, and mending lock	1 00	
	5 new knobs on table, (Com. Judiciary,) mending lock, and new key	1 00	
	Easing door and repairing letter box in post office	50	
	Easing door in vestibule, and repairing lock in Senate	1 25	
	Mending 2 chairs and putting in new banisters	1 75	
	Facing box for stationery	50	
	Mending sofa and fixing inkstand box	1 75	
	Restuffing cushions in office	1 25	
	Hanging portraits in Vice Presidents chamber, and 1 ruler for office	75	
	New lock for case (Com. Foreign Relations)	75	
	New cord for door of water closet	75	
	Mending 2 chairs for Senate	1 75	
	1 large pine table, with drawer	15 00	
	1 large stand for books, in folding room	85 60	
	Making 90 packing boxes, at $2 75	247 50	
	Repairing 2 wheelbarrows	6 50	
	2 locks for packing boxes	1 00	
	1 box for office	5 00	
	1 lock for water closet	75	
			377 47

STATEMENT—Continued.

To whom paid.	For what object.		Amount.	Total.
James G. Berret	Excess of postage on letters and packages addressed to senators, from January 1 to March 1, 1857			$62 41
Fitzhugh Coyle & Bro	Lumber, &c., for inauguration platform, viz:			
	2,069 ft. 18 to 26 ft. joist, at $2		$41 38	
	357 ft. 12 to 14 ft. joist, at $1 50		5 35	
	1,350 ft. 3×9 Carolina, at $3		40 50	
	949 ft. 4×4 Carolina studs, at $3		28 47	
	1,174 ft. 3×4 E. S. studs, at $1 50		17 61	
	838 ft. 8-4 white pine, at $3		25 14	
	916 ft. 5-8 white pine, at $2 75		25 19	
	896 ft. spruce studs, 14 ft., at $2		17 92	
	164 ft. 4×6 E. S. silling, at $2 25		3 69	
	2,727 ft. 8-4 picked culls, at $2 25		61 35	
	3,906 ft. 4-4 picked culls, at $2 25		87 89	
	9,529 ft. 4-4 picked culls, at $2		190 58	
	420 ft. 6-4 picked culls, at $2 25		9 45	
				554 52
J. Dodson	84 buckets of paste for use of Senate, at $1 per bucket			84 00
Brown & Co	Stationery, viz:			
	30 reams Monier's large cream laid note, ruled and gilt, at $3 98		119 40	
	18 do do do at $3 98		71 64	
	20 reams De la Rue's double thick note, plain, at $4 98		99 60	
	5,000 note envelopes, No. 3, amber, at $2 74		13 70	
	5,000 note envelopes, No. 4, at $2 74		13 70	
	32 reams white laid 4to post, gilt, 9 pounds, at $3 48		111 36	
	70 reams gilt and faint lined, at $3 48		243 60	
				673 00
Preston Starritt	Services as messenger for 2 years and 2 months, from December 1, 1854, to February 1, 1857, under Senate resolution of February 17, 1857, at $1,200 per annum	$2,600 00		
	Extra allowance to employés, under resolution of August 30, 1856	200 00		
			2,800 00	

	Cr., by cash received from the United States for 2 years and 2 months, at the rate of $480 per annum	1,040 00		
	Cr., by cash received as extra compensation, under resolution of August 30, 1856	200 00		
			1,240 00	
				1,560 00
James Harlan	Newspapers			15 25
J. J. Dickins	Services as temporary clerk from December 1, 1856, to March 3, 1857, inclusive, 93 days, at $4 80 per day			446 40
A. O. P. Nicholson	Publishing in the Washington Union the proceedings and debates of the Senate, under Senate resolution of August 30, 1856, $798\frac{75}{200}$ columns, at $1 50 per column		3,592 69	
	Cr., by deduction being amount charged for President's messages, reports executive departments, reports of committees, &c., $204\frac{37}{200}$ columns, at $4 50 per column		918 61	
				2,674 08
Y. P. Page	Amount paid to chairman Committee on Enrolled Bills of the Senate for hack hire, &c., for use of said committee			115 00
Charles Durkee	Newspapers			23 00
Pringle Slight	Cash paid (as per account paying roll) for carpenters' and laborers' wages and cartage, for constructing the platform and covered way for the inauguration of the President of the United States, March 4, 1857			333 46
Robert Farnham	Stationery, viz:			
	6 dozen silk taste, at $1 75		10 50	
	3 gross electro pens, at $2		6 00	
	6 gross Perry's pens, No. 27, at 37 cents		2 22	
	5 gross Herts & Son's commercial pens, at $1 50		7 50	
	5,000 buff letter envelopes, at $3 50		17 50	
	20,000 De la Rue's large note envelopes, at $5 50		110 00	
	30,000 De la Rue's small note envelopes, at $4 50		135 00	
	2 dozen red and blue pencils, at $1 50		3 00	
	2 dozen red pencils, at $1		2 00	
	2 dozen blue pencils, at 75 cents		1 50	
	10 pounds wax tapers, at $1 25		12 50	
	42,000 wax matches, at 60 cents		25 20	
	1 dozen large letter clips		8 00	
	4 dozen large inkstands and racks, at $15		60 00	
	5 gross red tape, No. 23, at $3 50		17 50	
	5 gross red tape, No. 19, at $2 80		14 00	
	30 gross red tape, No. 15, at $2 12		63 60	
	5 pounds India rubber, at 90 cents		4 50	

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
Robert Farnum—Continued	5 gross stenographic pens, at 62 cents	$3 10	
	8 dozen boxes transparent wafers, at 30 cents	2 40	
	5,000 embossed card envelopes, at $2 30	11 50	
	5,000 plain card envelopes, at $2 50	12 50	
	8 dozen pearl folders, at $6	48 00	
	5,000 damask note envelopes, at $3	15 00	
	15 gross Herts' barrel pens, at $2	30 00	
	7 dozen letter balances, at $18	126 00	
	8 dozen pairs scissors, at $3 50	28 00	
	20,000 white adhesives envelopes, 8¼ by 3¾, at $6 75	135 00	
	9,250 do 6⅜ by 3¾, at $4 75	43 94	
	10,000 do 5¾ by 3¼, at $3	30 00	
	31,500 do 5¼ by 3⅛, at $3	94 50	
	25,000 large white note envelopes, at $3	75 00	
	3 dozen pairs paper shears, at $12	36 00	
	6 dozen 4-blade buck penknives, at $12	72 00	
	20 reams white laid ruled letter, at $3 25	65 00	
	60 sheets parchments, at 35 cents	21 00	
	5 reams amber note paper, plain, at $2	10 00	
	5 do ruled, at $2 12	10 60	
	5 reams plain Bath letter paper, at $4 25	21 25	
	5 reams cream laid note paper, plain gilt, at $2 62½	13 12	
	5 do faint and gilt, at $2 87½	14 37	
	3 reams legal cap paper, at $6	18 00	
	6 dozen fancy pen-holders, at $1 25	7 50	
	15 reams wove Bath letter paper, plain gilt, at $4 25	63 75	
	25 reams laid note, ruled and gilt, at $2 87½	71 87	
	15 do plain and gilt, at $2 62½	39 37	
	15 reams amber note, ruled, at $2 12	31 80	
	5 do plain, at $2	10 00	
	10 reams wove note paper, ruled, at $1 62½	16 25	
	55,000 adhesive document envelopes, at $3	165 00	

	95,000 document envelopes, at $2 80	266 00	
	½ dozen rubber bands and ruler	62	
	1 bottle copying ink	50	
	11 morocco covered inkstands, at 37½ cents	4 12	
	12 Fry's large inkstands	7 50	
	20 reams white laid Bath letter, ruled and gilt, at $4 25	85 00	
	20 do gilt, at $4 25	85 00	
	13 do wove, gilt, and ruled, at $4 25	55 25	
	105,000 buff document envelopes, at $2 80	294 00	
	1 piece fine sponge	31	
	3 dozen screw top glass inkstands, at $3	9 00	
	28 reams white laid ruled letter paper, at $3 25	91 00	
	1 pounce box, and bottle of pounce	50	
	Engraving 2 seals	1 00	
	2 dozen B. & W.'s writing ink	2 25	
	½ ream English letter paper	1 75	
	12 papers of large needles	1 75	
			$2,747 89
R. Farnham	Books, viz:		
	Vol. 6, Opinions Attorney General	3 00	
	Vol. 5 do (in exchange)	1 50	
	Vol. 6 do do	3 00	
			7 50
George L. Sites	For services performed by direction of the Committee on Private Land Claims, from September 1 to November 30, 1856, inclusive, 91 days, at the rate of $1,850 per annum		462 50
M. Gross	Publication of inauguration programme in the National Gazette		30 00
Adeline Sergeant	Binding, 1st and 2d sessions 34th Congress, viz:		
	50 copies vol. 16, Senate Docs., calf, at 60 cents	30 00	
	100 do 1, part 2, House Docs., calf, at 60 cents	60 00	
	100 do 1, part 3, do	60 00	
	100 do 4 do	60 00	
	100 do 6, part 2 do	60 00	
	100 do 7 do	60 00	
	100 do 12 do	60 00	
	37 do 6, part 1 do	22 20	
	37 do 5 do	22 20	
	37 do 16 do	22 20	
			456 60

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
Adeline Sergeant	Binding, 1st and 2d sessions 34th Congress, viz:		
	50 copies vol. 10, Senate Docs., calf, at 60 cents	$30 00	
	50 do 19, part 1, Senate Docs., calf, quarto, at $1 20	60 00	
	400 do 16, Senate Docs , sheep, at 39 cents	156 00	
	63 do 16, Senate Docs., calf, at 60 cents	37 80	
	63 do 5, House Ex. Docs., calf, at 60 cents	37 80	
	63 do 6, part 1, House Ex. Docs., calf, at 60 cents	37 80	
	32 copies House Journal, calf, at 60 cents	19 20	
	38 copies vol. 16, Senate Docs., sheep, at 39 cents	14 80	
			$423 42
J. C. McGuire	Binding, viz:		
	1,000 copies Commercial Relations, vol. 1, at 75 cents	750 00	
	5,000 copies Finance Report, 3d session 34th Congress, at 12½ cents	625 00	
	5,000 copies Message of President, 3d session 34th Congress, vol. 2, at 12½ cents	625 00	
			2,000 00
Bull & Tuttle	Newspapers		8 00
E. T. Montague	Clerk to Committee on Foreign Relations from 21st to 30th August, 1856, inclusive, 10 days, at $6 per day	60 00	
	Ditto, from 4th to 14th March, 1857, inclusive, 11 days, at $6 per day	66 00	
			126 00
M. W. Galt & Brother	62 gold pens and pencils, at $7 50		465 00
J. B. Martin	Clerk to Committee on District of Columbia, from 4th to 14th March, 1857, inclusive, 11 days, at $6 per day		66 00
M. A. Goodfellow	Clerk to Committee on Pensions, from February 1 to March 3, 1857, inclusive, 31 days, at $6 per day		186 00
James Ackerman	Transferring and printing 3,420 copies, each, of 6 plates, diagrams to accompany Senate Ex. Doc. No. 27, 3d session 34th Congress		243 82
J. & E. Brooks	Newspapers		17 63
C. Ivey	Son, as page, from 1st to 14th March, 1857, inclusive, at $2 40 per day		33 60
J. L. Wirt	do do do		33 60
L. Golding	do do do		33 60
J. A. Kesley	do do do		33 60

Smith	do do do		33 60
E. Eckloff	do do do		33 60
S. A. Caton	do do do		33 60
L. E. Brockett	do do do		33 60
J. Walsh	do do do		33 60
B. Lynch	do do do		33 60
N. R Stinson	Newspapers		1 75
S. T. Taylor	do		5 00
S. Hamner & Co	do		7 00
Mead & Griswold	do		6 00
Geo. Wadleigh	do		2 00
E. J. Croxton	do		9 00
J. S. Williams	Cash paid for transportation of wood cuts, &c., for Reports of Japan Expedition, Pacific Railroad Surveys, Patent Office Report, Coast Survey, and Mexican Boundary, from June 9, 1856, to February 28, 1857	40 90	
	Cr., by one-half charged to and paid by House of Representatives	20 45	
			20 45
A. O. P. Nicholson	Advertising, viz:		
	Proposals for wood engraving	8 75	
	Do do	12 50	
	Proposals for engraving	3 00	
	Do	12 00	
	Proposals for copper plate engraving	9 00	
	Do do	11 25	
		56 50	
	Cr., by one-half paid by House of Representatives	28 25	
		28 25	
	Proposals for engraving	6 00	
	Proposals for steel plate printing	4 50	
	Proposals for coloring 4to plates	4 50	
			43 25
N. R. Stimson	Advertising in N. Y. Day Book proposals for coloring 4to plates of fishes and shells		7 50
A. S. Abell & Co	Advertising in Baltimore Sun proposals for copper plate engraving		13 50
A. G. Hayden	Clerk Committee on Commerce, from 4th to 10th March, 1857, at $6 per day		42 00
G. L. Sites	Clerk Committee on Private Land Claims, allowance under Res. of Senate, Mar. 14, '57.	360 00	
J. B. Martin	do District of Columbia do do	360 00	
J. F. Callan	do Military Affairs do do	360 00	

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
N. Vedder	Clerk Committee on Territories, allowance under Res. of Senate, March 14, 1857	$360 00	
C. W. Downing	do Naval Affairs do do	360 00	
F. W. Darden	do Public Lands do do	360 00	
W. F. Wallace	do Indian Affairs do do	360 00	
R. A. Matthews	do Revolutionary Claims do do	360 00	
T. P. Morgan	do Judiciary do do	360 00	
S. L. Lewis	do Post Office and Post Roads do do	360 00	
J. W. Nixon	do Roads and Canals do do	360 00	
M. A. Goodfellow	do Pensions do do	360 00	
O. K. Barrell	do Public Buildings do do	360 00	
A. G. Hayden	Clerk Com. on Commerce, allowance under Res. of Sen. of March 14, to March 10, '57	346 00	
T. O. Chestney	do do do from Mar. 11 to 14	13 85	
Geo. H. Jones	do Agriculture do to Feb. 20	316 00	
Lewis Jones	do do do fr. Feb. 21 to Mar. 3	44 00	
J. Freize	do Patents do to March 10, '57	360 00	
E. T. Montague	do Foreign Relations do do	360 00	
			$6,120 00
G. L. Sites	Clerk Committee on Private Land Claims, from March 4 to 14, 1857, 11 days, at $6		66 00
J. F. Callan	do Military Affairs do do		66 00
Nicholas Vedder	do Territories, from March 1 to 14, 1857, 14 days, at $6		84 00
C. W. Downing	do Naval Affairs, from March 4 to 14, 1857, inclusive, 11 days, at $6		66 00
F. W. Darden	do Public Lands, from February 1 to March 14, 1857, 42 days, at $6		252 00
W. F. Wallace	do Indian Affairs, from March 4 to 14, 1857, 11 days, at $6		66 00
R. A. Matthews	do Revolutionary Claims do do		66 00
T. P. Morgan	do Judiciary do do		66 00
S. L. Lewis	do Post Office and Post Roads do do		66 00
M. A. Goodfellow	do Pensions do do		66 00
O. K. Barrell	Clerk Committee on Public Buildings, from December 1, 1856, to March 14, 1857, inclusive, 104 days, at $6		624 00
S. De Camp	Binding 207 volumes part 1, and 831 volumes part 2, of Congressional Globe, 1st and 2d sessions 34th Congress, 1,038 volumes, at 39 cents		404 82
W. Bigler	Cash paid for hack hire, &c., for com. of arrangements, at inauguration, March 4, 1857		12 25

Charles Dean	Twine, viz:		
	207 pounds large twine, at 35 cents	72 45	
	25 do	8 75	
	35 do	12 25	
	154 do	53 90	
	15¼ pounds bagging twine, at 50 cents	7 62	
			154 97
George H. Andrews	Newspapers		60 00
Knowles & Anthony	do		2 33
Sayles, Miller & Co	do		5 75
Hall, Herrick & Co	do		2 00
John Appleton	do		36 99
W. A. Wheeler	1 dozen cap blotters, roan		8 06
Robert Morris	200 copies Congressional Directory, 3d session 34th Congress, at 12½ cents per copy		25 00
J. & R. Kingsland	Plate paper, viz:		
	7,096 pounds paper, at 20 cents	1,419 20	
	9,836 do	1,967 20	
	834 do	166 80	
	182 do	36 40	
	404 do	80 80	
			3,670 40
S. L. Lewis	1 writing desk for Committee on the Post Office and Post Roads room	15 00	
	1 circular chair for same	13 00	
			28 00
Amelia Spencer	Washing 22 dozen towels, 3d session 34th Congress, at 75 cents per dozen		16 50
Lumsden, Kendall & Co	Newspapers		7 00
Halleck, Hale & Halleck	do		116 83
McKey & Fishback	do		2 00
P. S. Duvall & Son	Transferring and printing 12,400 copies, each, of 10 plates of fishes, to illustrate the Report of the Pacific Railroad Surveys, 124,000 plates, at 60 cents per 100		744 00
Adeline Sergeant	Binding, 1st and 2d sessions 34th Congress, viz:		
	100 copies vol. 2, House Ex. Docs., calf, at 60 cents	60 00	
	100 do 8 do do 60 do	60 00	
	100 do 9 do do 60 do	60 00	
	100 do 11 do do 60 do	60 00	
	100 do 13 do do 60 do	60 00	
	100 do 15 do do 60 do	60 00	
	100 do 1, House Mis. Docs., do 60 do	60 00	
	100 do 2 do do 60 do	60 00	

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
Adeline Sergeant—Continued	27 copies, vol. 1, part 1, House Ex. Docs., calf, at 60 cents	$16 20	
	27....do....16.....do.....do....60..do	16 20	
	10....do....19, part 1, Sen. Ex. Docs., quarto, at 79 cents	7 90	
			$520 30
N. C. Towle	Clerk to Committee of Claims from 4th to 31st March, 1857, 28 days, at $6		168 00
Harry Dodson	Services as laborer, for March, 1857, 31 days, at $1 20		37 20
C. W. C. Dunnington	Police of Capitol, for March, 1857	72 50	
J. L. Wirt	.....do.....do	55 00	
A. K. Arnold	.....do.....do	55 00	
I. W. Griffith	.....do.....do	55 00	
S. J. Johnson	.....do.....do	55 00	
James T. Ball	.....do.....do	55 00	
W. H. Thompson	.....do.....do	55 00	
W. Morgan	.....do.....do	55 00	
			457 50
Ann E. Ragan	For son, as page, for March, 1857, 31 days, at $2 40 per day		74 40
T. O. Chestney	Clerk to Committee on Commerce, from 10th to 14th March, 1857, 4 days, at $6		24 00
D. R. McNair	Hire of 4 horses and wagons, for March, 1857, 31 days, at $2 each	248 00	
	Hire of 2 saddle horses, from 1st to 19th March, 19 days, at $1 50	57 00	
			305 00
D. Conroy	Hire of horse, for use of office, for March, 1857, 31 days, at $1 50		46 50
Gales & Seaton	Newspapers		364 00
C. Lee	Removing coal 6 days, at $1 20 per day		7 20
J. C. Rives	Reporting and printing proceedings and debates of the Senate, from 29th January to 27th March, 1857, $634\frac{124}{200}$ columns, at $7 50 per column		4,762 06
E. V. Campbell	Watchman in the crypt, for March, 1857		33 33
John Pettibone	46 bushels ice, from 1st March to 2d April, 1857, at 50 cents		23 00
G. W. S. Nicholson	Newspapers		2 00
C. P. Johnson	.....do		3 00
J. C. McGuire	Binding, viz:		
	15,000 copies Agricultural Report Comm'r Patents, 1st sess. 34th Cong., at 12½ cents	1,875 00	
	1,900 copies Medical Statistics U. S. Army, at 75 cents	1,425 00	

	1,000 copies Commercial Regulations United States, at 75 cents	750 00	
	2,000 copies Annual Report Comm'r Indian Affairs, 3d sess. 34th Cong., at 12½ cents	250 00	
	500 copies Finance Report, 3d session 34th Congress, at 12½ cents	62 50	
			4,362 50
S. De Camp	Stationery, viz:		
	Lettering 6 portfolios, 3 memorandum books, and 3 names for trunks	1 87	
	Printing and ruling 150 parchments, at 10 cents	15 00	
	Ruling 200 parchments, at 6¼ cents	12 50	
	Lettering 8 portfolios, 8 memorandum books, and 8 names for trunks	4 00	
	Lettering 1 portfolio, 1 memorandum book, and 1 name for trunk	62½	
	Lettering 1 memorandum book	12½	
	Ruling and printing 51 parchments, at 10 cents	5 10	
			39 22½
S. De Camp	Binding, viz:		
	President's Message, (Committee on Finance)	75	
	2 guard books, National Intelligencer, 1857, 2 parts	6 00	
	2....do.....Union.....do	6 00	
	Binding Receipts and Expenditures, (office)	75	
	Binding Decisions Court of Claims	75	
	Binding Message of President, Correspondence of Gen. Scott	75	
	Binding Union, 1856, parts 1 and 2	7 00	
			22 00
Adeline Sergeant	Binding, 1st and 2d sessions 34th Congress, viz:		
	140 copies vol. 14, Senate Docs., calf, at 60 cents	84 00	
	140....do..... 6.....do.....do....60..do	84 00	
	240 copies House Journal.....60..do	144 00	
	438 copies vol. 7, Senate Docs., sheep, at 39 cents	170 82	
	438....do....14.....do.....do.... 39..do	170 82	
	400....do.... 6.....do.....do.... 39..do	156 00	
	10....do.... 7.....do.....do ... 39..do	3 90	
			813 54
Sarony, Major & Knapp	Drawing and printing 12,400 copies, each, of 14 plates of lithographs, to illustrate Report of Pacific Railroad Surveys, 173,600 plates, at $2 60 per 100	.....	4,513 60
Sturdivant & Maas	Engraving 13 pages wood cuts to illustrate Report of the Commissioner of Patents for 1856 on Arts and Manufactures, at $32 50 per page	422 50	
	Cr., by this amount paid by House of Representatives	289 50	
			133 00
A. Hoen & Co	Transferring and printing 11,420 copies, each, of 4 maps to accompany Report of Superintendent Coast Survey, 1855, 45,680 copies, at $1 16¼ per 100	.....	531 03

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
Greeley & McElrath	Newspapers		$82 33
Joseph Prestell	Engraving on stone 10 botanical plates of cactaceæ, to illustrate Report Pacific Railroad Surveys, at $13	$130 00	
	Cr., by one-half paid by House of Representatives	65 00	
			65 00
J. Contner	Upholstering, viz:		
	Tieing up curtains in ladies' gallery	1 00	
	Repairing and tacking down carpet in vestibule	1 00	
	Tacking down carpet in Senate chamber	1 00	
	Sewing and tacking down carpet in office of Secretary	1 00	
	Putting up curtains in reception room	2 50	
	Tieing up curtains in ladies' gallery	1 00	
	Making 1 cushion for senator's chair	5 00	
	Tacking down carpet in gentlemen's gallery	1 00	
			13 50
R. B. Griffin	Carpenter's work, viz:		
	3 hooks and staples for gallery door, and removing screws and labels from desks, Senate	2 25	
	Screwing up boxes, and 20 new screws	75	
	Removing stoves, Senate	1 00	
	Putting up screens, repairing locks, and screwing down desks, Senate	2 50	
	2 mahogany shelves for desks	7 50	
	2 mortise locks, Committee on Foreign Relations and Military Affairs	6 25	
	Putting knobs on drawers, Committee on Foreign Relations, and partitions in box	1 75	
	1 lock for case, and mending chairs, Committee on Foreign Relations	2 25	
	Making 2 hat racks for chairs	3 50	
	Screwing up packing boxes, and 58 screws	1 50	
	1 night lock on door, Committee on Pensions	1 75	
	Cutting floor for stand, folding room	50	
	2 new locks for packing boxes	1 00	
	Repairing stand, and 2 keys, Committee on the Judiciary	1 50	
	2 locks for packing boxes	1 00	
	1 dozen 2-inch screws for packing boxes, and 1 new key for water closet	1 25	

	1 door key, Vice President's chamber	1 00	
	Cutting out partitions in case, Printing Committee room, putting divisions in drawer, and raising tables	3 25	
	Putting castors on chairs, and mending chair, office	2 00	
	42 screws for packing boxes, and fixing window over chandelier	1 25	
	96 packing boxes, at $2 75	264 00	
	1 wire case for Committee on Indian Affairs	98 25	
			406 00
Y. P. Page	Hack hire, freight, &c., for use of Senate		20 00
Thomas Sinclair & Co	Lithographing and printing 12,400 copies, each, of 8 plates, views to illustrate Report Pacific Railroad Survey—99,200 plates, at $2 60 per 100		2,579 20
John C. Rives	Newspapers		9 75
James Ackerman	Engraving and printing 16,400 copies, each, of 5 maps to accompany the annual message, 3d session 34th Congress		2,274 84
	Printing 500 copies of 5 maps to accompany the Report of Commissioner of General Land Office, 3d session 34th Congress, at $10 81 per 100		54 05
A. Sergeant	Binding, 1st and 2d sessions 34th Congress, viz:		
	448 copies volume 9, Sen. Docs., sheep, at 39 cents	174 72	
	448 do 12 do do	174 72	
	140 do 12 do calf, at 60 cents	84 00	
	140 do 7 do do	84 00	
	113 do 9 do do	67 80	
	40 volumes House Journal, calf, at 60 cents	24 00	
		609 24	
	Inserting maps in 23,382 volumes, at $\frac{1}{10}$ cent, viz: Vols. 1, 2, 3, 4, 5, part 2; 6, 8, 9, 10, 14, 15, (1st sess. 32d Congress;) vols. 1, 6, 7, 8, 10, 11, (2d sess. 32d Congress,) maps accompanying message; vols. 5, 8, 9, 12, 13, (1st sess. 33d Congress;) vols. 3, 6, 7, and 12, (2d sess. 33d Congress)	233 82	
			843 06
J. H. Hollingsworth	Plate paper, viz:		
	$6\frac{12}{20}$ reams plate paper, 19×24 inches, 60 pounds per ream, at $12	81 60	
	$10\frac{8}{20}$ do do do at $12	124 80	
	66 do do do at $12	792 00	
			998 40
John C. Rives	5,766 copies of the Congressional Globe and Appendix, for members of the Senate, for the 3d sess. 34th Congress, at $3 per copy		17,298 00

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
J. C. McGuire	Binding, viz:		
	2,000 copies Commercial Relations United States, 1st sess. 34th Congress, at 75 cents per volume	$1,500 00	
	2,000 copies Coast Survey Report, 1st sess. 34th Congress, at 75 cents per volume	1,500 00	
	2,088 copies Gilliss' Report, vol. 6, 1st sess. 34th Congress, at 75 cents per volume	1,566 00	
	4,400 copies Agricultural Patent Office Report, 1st sess. 34th Congress, at 12½ cents	550 00	
	44 copies Medical Statistics, 1st sess. 34th Congress, at 75 cents per volume	33 00	
			$5,149 00
N. C. Towle	Clerk to Committee on Claims for April, 1857, 30 days, at $6		180 00
D. R. McNair	Hire of 4 horses and wagons for April, 1857, 30 days, at $2 each		240 00
D. Conroy	Hire of horse, for use of office, for April, 1857, 30 days, at $1 50		45 00
H. Dodson	Laborer, carrying fuel, &c., in April, 1857, 25 days, at $1 20		30 00
A. E. Ragan	For son, as page, for April, 1857, 30 days, at $2 40		72 00
C. W. C. Dunnington	Police of Capitol, for April, 1857	72 50	
J. L. Wirt	do do	55 00	
I. W. Griffith	do do	55 00	
A. K. Arnold	do do	55 00	
W. H. Thompson	do do	55 00	
S. J. Johnson	do do	55 00	
J. T. Ball	do do	55 00	
W. Morgan	do do	55 00	
			457 50
E. V. Campbell	Watchman in crypt of Capitol, for April, 1857		33 33
Bradbury & Co	Newspapers		5 00
S. De Camp	Binding 1,093 volumes Congressional Globe, 1st session 34th Congress, part 1, and 1,044 volumes same, part 2, 2,137 volumes, at 39 cents		833 43
J. Harding & Son	Newspapers		10 36
R. B. Griffin	Carpenter's work, viz:		
	1 key for case, (Committee on Judiciary)	25	
	Putting up shelf, document room	75	
	1 board, (Committee on Public Lands)	50	
	32 packing boxes, at $2 75 each	88 00	

	2 locks for boxes, Senate	1 00	
			90 50
J. Freize	Clerk Committee on Patents, from March 4 to 14, 1857, 11 days, at $6		66 00
A. Sergeant	Binding, 1st and 2d sessions 34th Congress, viz:		
	140 copies volume 13, part 2, calf, Senate documents, at $1 20	168 00	
	220 copies volume 13, part 2, sheep, Senate documents, at 79 cents	173 80	
	10 copies volume 11, part 2, sheep, House documents, at 79 cents	7 90	
	70 volumes Senate documents, 1st session 34th Congress, sheep, at 39 cents	27 30	
	90 copies volume 6, part 3, House executive documents, sheep, at 60 cents	54 00	
	27 copies volume 9, Senate documents, sheep, at 60 cents	16 20	
	10 copies volume 13, part 2, at 79 cents	7 90	
			455 10
Charles O. Rogers	Newspapers		5 25
Charles O. Rogers	Advertising in Boston Daily Journal proposals for copper plate engraving		9 00
Clagett, Newton, May & Co	5 dozen black kid gloves, at $15	75 00	
	1 dozen black silk gloves	12 00	
	6 boxes black crape, at $5	30 00	
	1 yard black cambric	13	
			117 13
Isaac Contner	Taking up carpets in Senate chamber, vestibule, Vice President's and ante chambers, cleaning and packing same and moving and replacing furniture, &c	50 00	
	Taking down curtains in Senate, Vice President's and ante chambers, cleaning and packing away	20 00	
	Taking up carpets in ladies and gentlemen's gallery and stairways, cleaning carpets, cushions and floors	30 00	
	Taking up carpets in 17 committee rooms, including post office, and moving and replacing furniture, documents, &c	5 50	
	Taking up carpets in Sergeant-at-arms' room and cloak room, and cleaning and packing away	3 00	
	Tobacco for packing	1 75	
			164 25
T. W. Turner	Newspapers		3 59
Babcock & Wildman	do		29 42
A. Sergeant	Binding, 1st and 2d sessions 34th Congress, viz:		
	140 copies volume 4, Senate documents, calf, at 60 cents	84 00	
	140 do 13 do do	84 00	
	458 do 4 do sheep, at 39 cents	178 62	
	458 do 13 do do	178 62	
	38 do 6 do do	14 82	

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
A. Sergeant—Continued	Binding, 1st and 2d sessions 34th Congress, viz:		
	100 copies volume 1, part 4, House executive documents, calf, at 60 cents	$60 00	
	90 do 13, part 2, Senate documents, 4to, calf, at $1 20	108 00	
	226 do 13, part 2, Senate documents, 4to, sheep, at 79 cents	178 54	
			$886 60
Francis Hall & Co	Newspapers		7 50
Wilkinson & Co	do		32 00
A. Sergeant	Binding, 1st and 2d sessions 33d Congress, 100 copies volume 3 House executive documents, 4to, calf, at $1 20		120 00
W. M. Morrison	Newspapers		46 00
J. C. McGuire	Binding, viz:		
	5,000 copies Message and Documents, vol. 1, 3d session 34th Congress, at 12½ cents	625 00	
	5,000 copies Message and Documents, vol. 2, at 12½ cents	625 00	
	1,000 copies Coast Survey Report, 1855, at 75 cents	750 00	
	15,000 copies Mechanical Report Commissioner Patents, volume 1, 1856, at 12½ cents	1,875 00	
	1,500 copies Pacific Railroad Survey, volume 2, at 75 cents	1,125 00	
			5,000 00
S. De Camp	Binding 1,479 volumes Congressional Globe, parts 1 and 2, 1st and 2d sessions 34th Congress, at 39 cents per volume		576 81
Gales & Seaton	Advertising, viz:		
	Proposals for binding	11 25	
	Proposals for wood and coal	6 00	
	Proposals for stationery	75 00	
	Proposals for binding	5 00	
			97 25
D. R. McNair	Hire of 3 horses and wagons, for May, 1857, 31 days, at $2 each		186 00
C. W. C. Dunnington	Police of the Capitol, for May, 1857	72 50	
J. L. Wirt	do do	55 00	
I. W. Griffith	do do	55 00	
A. K. Arnold	do do	55 00	
J. T. Ball	do do	55 00	
Samuel J. Johnson	do do	55 00	

W. H. Thompson	do do	55 00	
Thomas C. Wells	do do	55 00	
			457 50
E. V. Campbell	Watchman in crypt, for May, 1857		33 33
A. E. Ragan	For son, as page, for May, 1857, 31 days, at $2 40		74 40
D. Conroy	Hire of horse, for use of office, for May, 1857, 31 days, at $1 50		46 50
John Pettibone	50 bushels ice, from April 3 to June 1, 1857, at 50 cents		25 00
H. Dodson	Laborer, carrying wood, &c., for May, 1857, 26 days, at $1 20		31 20
N. C. Towle	Clerk to Committee on Claims, for May, 1857, 31 days, at $6		186 00
S. Masi	Attending clock 3 months ending June 1, 1857		50 00
Adeline Sergeant	Binding, 3d session 34th Congress, viz:		
	140 copies Senate Reports, calf, at 60 cents	84 00	
	27 copies House Journal, calf, at 60 cents	16 20	
	38 copies Senate Reports, sheep, at 39 cents	14 82	
			115 02
H. Polkinhorn	Printing badges for Capitol police, and furnishing silk for same		10 00
W. A. Harris	Advertising, viz:		
	Proposals for stationery	75 00	
	Proposals for wood and coal	5 25	
	Corrections of proposals for stationery	2 00	
			82 25
W. A. Harris	Newspapers		20 00
J. P. Heiss	Advertising proposals for stationery		47 50
A. Sergeant	Binding, 3d session 34th Congress, viz:		
	408 copies Senate Reports, at 39 cents	159 12	
	144 copies House Journal, at 60 cents	86 40	
			245 52
O. Barrett	Newspapers		3 50
W. C. Bryant	do		5 00
S. De Camp	Binding 1,125 copies Congressional Globe, 1st and 2d sessions, 34th Congress, at 39 cts.		438 75
Cincinnati Gazette Company	Newspapers		15 25
M. Phineas	Stationery, viz:		
	8 dozen agate seals, large, at $7	56 00	
	9 do small, at $5	45 00	
	1 gross red and blue pencils	9 00	
	204 dozen barrel pens, No. 48, at 20⅔ cents	42 16	
	25 do No. 334, at 11½ cents	2 87	
	96 dozen pens, on cards, New York commercial, No. 338, at 15⅔ cents	15 04	
	75 do 3 point, No. 96, at 16⅔ cents	12 50	

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
M. Phineas—Continued	Stationery, viz: 204 dozen pens, on cards, Jenny Lind, No. 600, at 22 cents	$44 88	
			$227 45
Adeline Sergeant	Binding, viz:		
	280 copies Senate Journal, 3d session 34th Congress, at 61 cents	170 80	
	449 do do at 39 cents	175 11	
	63 copies vol. 17, Senate Documents, quarto, 1st and 2d sessions, at $1 20	75 60	
	48 do do do at 78 cents	37 44	
	10 copies Senate Journal, 3d session, at 39 cents	3 90	
	10 copies Reports of Committees, at 39 cents	3 90	
			466 75
F. Taylor	Books, viz:		
	British Almanac and Companion, 1857, and Royal Kalendar, 1857	3 75	
	2 American Almanacs, 1857, and binding	3 00	
	Annals of British Legislation for 1 year	12 00	
	Daddsley's Annual Register, 1758 to 1855, and Index from 1758 to 1819—100 vols., 8vo.	180 00	
	Binding documents, $1 10 per vol.	110 00	
	Hertlett's Treaties, 8 vols	49 50	
	Dictionary of the Army	2 50	
	De Bow's Review	4 17	
	Hertlett's Treaties, 9th vol	10 50	
	Martin's British Colonies, 6 vols	24 00	
			399 92
John C. Rives	Excess of 128 pages on each of 5,766 copies Congressional Globe and Appendix for 3d session 34th Congress, (1,628 pages in each copy,) taken by the Senate, at the rate of 1 cent for every 5 pages		1,476 10
D. Conroy	Hire of horse, for use of office of Secretary of Senate, for June, 1857, 30 days, at $1 50		45 00
D. R. McNair	Hire of 3 horses and wagon, for June, 1857, 30 days, at $2		180 00
A. E. Ragan	Son, as page, for June, 1857, 30 days, at $2 40		72 00
C. W. C. Dunnington	Police of Capitol, for June, 1857	72 50	
J. L Wirt	do	55 00	
A. K. Arnold	do	55 00	
J. T. Ball	do	55 00	

S. J. Johnson	do	55 00	
W. H. Thompson	do	55 00	
Thomas C. Wells	do	55 00	
G. F. Smallwood	do	55 00	
			457 50
E. V. Campbell	Wa chman in the crypt, for June 1857		33 33
Bowne & Co	Stationery, viz:		
	44 reams cartridge paper, 21 by 25, at $3 20	140 80	
	72 do do	230 40	
	30 do do	96 00	
	56 do 19 by 24, at $2 74	153 44	
			620 64
H. Dodson	Laborer during the month of June, 1857		20 00
J. C. Rives	Books, viz:	155 00	
	1 set Globe and Appendix	155 00	
	do	155 00	
	do		465 00
John C. Rives	Newspapers		187 54
N. C. Towle	Clerk to Committee on Claims, for June, 1857, 30 days, at $6		180 00
Van Ingen & Snyder	Drawing and engraving on wood, and furnishing electrotypes of the same, 26½ pages of illustrations of camels, at $41 66½ per page		1,104 00
Charles Dean	Stationery, viz:		
	30 pounds large twine, at 35 cents	10 50	
	21 pounds bagging twine, at 50 cents	10 50	
	84 do	42 00	
	193 pounds large twine, at 35 cents	67 55	
			130 55
J. Dodson	75 buckets of paste for use of folding room		75 00
A. Hoen & Co	Transferring and printing 11,400 impressions, each, of 12 plates, maps accompanying Coast Survey Report for 1855, 136,800 maps, at $1 16¼ per 100		1,590 30
R. B. Griffin	Carpenter's work, viz:		
	Removing desks, Senate	7 87	
	Recovering and varnishing chairs, office	4 00	
	Repairing and varnishing cases, covering fall to case, and covering chair	9 00	
	1 lock on drawer, (office)	75	
	22 packing boxes, at $2 75	60 50	
	1 new lock to packing box	50	
	1 brush handle	25	

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
R. B. Griffin—Continued	Mending 1 chair, (folding room)	$1 25	
	Mending chair, (Senate)	75	
	Putting up shelves, (document room)	7 25	
	Nailing up slats, (folding room)	25	
	3 packing boxes, at $2 75	8 25	
	Making desks and chairs, (Senate)	100 00	
			$200 62
J. H. Richard	Engraving on copper 20 4to plates of "fishes and reptiles," to illustrate the Report of the Pacific R. R. Surveys, at $45 each	900 00	
	Cr., by one-half the above amount charged to the House of Representatives	450 00	
			450 00
J. H. Richard	Engraving on copper 18 4to plates of "mammals and fishes," to illustrate the Report of the Pacific R. R. Surveys, at $45 each	810 00	
	Cr., by one-half of the amount charged to the House of Representatives	405 00	
			405 00
M. C. Gritzner	Drawing on wood 513 pages of illustrations to accompany the Report of the Commissioner of Patents on Arts and Manufactures for 1856, at $5 per page	2,565 00	
	Cr, by this amount charged to the House of Representatives	1,755 00	
			810 00
P. S. Duval & Son	Transferring and printing 12,400 copies, each, of 8 plates of diagrams, to illustrate Report of Pacific R. R. Surveys, (99,200 plates,) at $60 per 100		595 20
P. S. Duval & Son	Transferring and printing 6,400 copies, each, of 2 plates of natural history, to illustrate the Report of the Japan Expedition, (12,800 plates,) at $60 per 100		76 80
P. S. Duval & Son	Transferring and printing 16,400 copies, each, of 5 maps to accompany the annual message, 3d session 34th Congress	1,444 68	
	For printing 500 copies of 4 maps to accompany Report of Commissioner of Land Office	25 60	
J. C. McGuire	Binding, viz:		1,470 28
	7,000 copies Report of Superintendent of Coast Survey, 1st session 34th Congress, at 75 cents	5,250 00	
	12,000 copies (mechanical) Patent Office Reports, 3d session 34th Congress, volume 1, at 12½ cents	1,500 00	

	600 copies Agricultural Report, (Patent Office,) 1st session 34th Congress, at 12½ cents.	75 00	6,825 00
William Roberts	Engraving on wood 119½ octavo pages of illustrations of machinery, to accompany Report Commissioner of Patents for 1856, at $26 50 per page	3,166 75	
	Cr., by this amount charged to House of Representatives	2,166 75	1,000 00
N. J. Wemmer	Furnishing 17,100 square inches of boxwood, for engraving illustrations for Report of Commissioner of Patents on Arts and Manufactures for 1856, 513 pages, at $1.	513 00	
	Cr., by this amount charged to House of Representatives	351 00	162 00
Wagner & McGuigan	Engraving and printing in colors 12,400 copies, each, of 1 geographical section, 1 geographical map, and 1 botanical profile of forest trees, to illustrate Report of Pacific Railroad Surveys		3,962 88
Wagner & McGuigan	Engraving and printing 16,900 copies, each, of 2 maps to accompany Annual Message, 3d session 34th Congress, and Report of Commissioner of the General Land Office.		1,027 25
Lovejoy & Wheeler	51 electrotype cuts, for Pacific Railroad Surveys—6 at $1 25, 8 at $1, and 37 at 50 cts.	34 00	
	46 electrotype cuts, for Mexican Boundary Survey—20 at $1 12½, 13 at $1 25, 3 at $1, and 10 at 50 cents	46 75	
	5 electrotype cuts, for Japan Report—1 at $2 50, and 4 at 50 cents	4 50	
	16 electrotype cuts, for Report of Commissioner Patents on Agriculture, at $2 each	32 00	
	For composition, packing boxes, express charges, &c	26 50	
		143 75	
	Cr., by this amount paid by House of Representatives	95 75	48 00
J. Bien	Transferring and printing 6,400 impressions, each, of 15 charts to accompany the Report of the Japan Expedition, (96,000 charts,) at $186 66 per 100		1,791 93
W. H. Harrover	1 water cooler		7 00
Adeline Sergeant	Binding, 1st and 2d sess. 34th Congress, 50 copies vol. 17, Sen. Docs., 4to, at $1 20	60 00	
	224 copies vol. 17, Sen. Docs., 4to, at 78 cts	174 72	234 72
P. S. Duval & Son	Transferring and printing 12,400 copies, each, of 2 plates, geology, to illustrate Report of the Pacific Railroad Surveys, (24,800 plates,) at 60 cts. per 100		148 80
P. S. Duval & Son	Transferring and printing 6,400 copies, each, of 10 plates fishes and 5 plates shells, for Report of Japan Expedition, (96,000 plates,) at 60 cents per 100		576 00
S. Seibert	Engraving on copper 11 plates of meteorological observations for Report of Pacific Railroad Surveys, at $45 each	495 00	
	Cr., by this amount paid by House of Representatives	247 50	247 50

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
S. Seibert	Engraving the following maps for Report of Pacific Railroad Surveys, viz: 1 map 47th and 49th parallels, Gov. Stevens' Report; 1 map 38th and 39th parallels, Capt. Gunnison's Report; 2 maps 32d parallel, Lieut. Williamson's Report; 1 map 47th and 49th parallels, Gov. Stevens' (profile) Report; 1 map 32d parallel, Lieut. Williamson's Report	$2,000 00	
	Cr., by this amount paid by House of Representatives	1,000 00	$1,000 00
S. Seibert	Additional engraving on charts to accompany Report of Japan Expedition	423 00	
	Cr., by two-thirds of above amount charged to House of Representatives	282 00	141 00
S. Seibert	Engraving on copper 2 4to pages, geology, for Rep. Pacific Railroad Surv., at $45 each	90 00	
	Cr., by one-half this amount charged to House of Representatives	45 00	45 00
James Ackerman	Transferring and printing 124,000 quarto plates of fishes, mammals, and reptiles, to illustrate Report Pacific Railroad Surveys, (10 plates, 12,400 copies each,) at 60 cents per 100		744 00
James Ackerman	Transferring and printing 12,400 copies, each, of 5 plates cactaceæ, to illustrate Report Pacific Railroad Surveys, (62,000 plates,) at 60 cents per 100		372 00
James Ackerman	Transferring and printing 12,400 copies, each, of 8 plates botany and 2 plates cactaceæ, to illustrate Report of Pacific Railroad Surveys, (124,000 plates,) at 60 cts. per 100		744 00
James Ackerman	Transferring and printing 12,400 copies, each, of 9 plates cactaceæ, to illustrate Report of Pacific Railroad Surveys, (111,600 plates,) at 60 cents per 100		669 60
James Ackerman	Transferring and printing 12,400 copies, each, of 4 plates botany, to illustrate Report of Pacific Railroad Surveys, (49,600 plates,) at 60 cents per 100		297 60
John Espy	Binding Congressional Globe and Appendix, 3d session 34th Congress, viz:		
	908 volumes Appendix to Congressional Globe, half Russia, at 38 cents	345 04	
	419 do do do 38 do	159 22	504 26
A. Hoen & Co	Transferring and printing 11,400 copies, each, of 13 maps to accompany Report of Superintendent Coast Survey for 1855, (148,200 maps,) at $11 62½ per 1,000		1,722 83
E. P. Tileston	For 351 1/20 reams plate paper, 19 by 24 inches, at $12 per ream		4,212 60
J. H. Upperman	Keeper of western gate, allowance under resolution Senate of August 30, 1856	125 00	

J. Coleman	Watchman do do do	125 00	
A. T. Allen	do do do do	125 00	
C. Kaufman	Lamplighter do do do	125 00	
C. Kraft	do do do do	125 00	
J. Maher	Public gardener do do do	125 00	
H. Graham	Laborer do do do	125 00	
J. Stone	do do do do	125 00	
N. Happ	do do do do	125 00	
T. Wall	do do do do	125 00	
J. Mockabee	do do do do	125 00	
P. Higgins	do do do do	125 00	
M. Connaughton	do do do do	125 00	
P. Twoomy	do do do do	125 00	
D. Mitchell	do do do do	125 00	
D. Moran	do do do do	125 00	
			2,000 00
W. H. Dougal	Engraving on copper 11 quarto plates of fishes, to illustrate Report Pacific Railroad Surveys, at $45 each	495 00	
	Cr., by one-half charged to House of Representatives	247 50	
			247 50
Van Ingen & Snyder	Engraving on wood 208 octavo pages of mechanical illustrations, to accompany Report of Commissioner of Patents for 1856, at $26 50 per page	5,777 00	
	Cr., by this amount paid by House of Representatives	3,952 00	
			1,825 00
F. Magruder	100 tons anthracite coal, as per contract, at $5 43 per ton		543 00
Van Ingen & Snyder	Engraving on wood 8 diagrams for Sen. Ex. Doc. No. 65, Report Prof Espey, at $5 each		40 00
Van Ingen & Snyder	Engraving on wood fac simile of Japan treaty, to accompany Report of Expedition to Japan, 14 pages, at $30	420 00	
	Cr., by this amount charged to House of Representatives	280 00	
			140 00
Van Ingen & Snyder	Engraving on wood illustrations to accompany Report of Commissioner Patents on Agriculture, for 1856, viz:		
	42 wood cuts	206 00	
	32 pages birds, at $34	1,088 00	
	10 pages animals, at $34	340 00	
		1,634 00	
	Cr., by this amount charged to House of Representatives	1,307 00	
			327 00

STATEMENE—Continued.

To whom paid.	For what object.	Amount.	Total.
Van Ingen & Snyder	Engraving on wood 30 illustrations to accompany Report of Pacific Railroad Surveys, (Abbot's and Bird's Reports)	$281 00	
	Cr., by one-half the above charged to House of Representatives	140 50	$140 50
John Espy	Binding Congressional Globe and Appendix, 3d session 34th Congress, viz: 322 copies Congressional Globe, half Russia, at 39½ cents	127 19	
	325 copies Appendix to Congressional Globe, half Russia, at 38 cents	123 50	250 69
John Espy	Binding Congressional Globe and Appendix, 3d session 34th Congress, viz: 1,411 copies Congressional Globe, half Russia, at 39½ cents	557 34	
	795 copies Appendix to Congressional Globe, half Russia, at 38 cents	302 10	859 44
A Hoen & Co	Lithographing and printing 12,400 copies, each, of 8 plates of views to illustrate Report of Pacific Railroad Surveys, (99,200 plates,) at $2 60 per 100		2,579 20
S. Seibert	Printing 2,000 impressions, each, of 46 4to plates of landscapes, outline sketches, and palæontology, to illustrate Report of United States Mexican Boundary Survey, (92,000 plates,) at 65 cents per 100		598 00
N. Orr & Co	Engraving on wood 162½ octavo pages of illustrations of machinery, to accompany Report of Com. of Patents on Arts and Manufactures for 1856, at $26 50 per page	4,306 25	
	Cr., by this amount charged to House of Representatives	2,946 25	1,360 00
J. Contnor	Taking up carpets in Secretary's office, cleaning, putting down, and repairing; moving and replacing furniture, &c	25 00	
	Taking up carpets in folding room, cleaning and packing away, and removing books	4 00	29 00
A. O. P. Nicholson	Pasting on boards and stringing 30 copies Rules and Regulations of the Senate, at 12½ cents	3 75	
	Ruling 842 sheets parchment, at $5 per 100	42 10	
	Ruling 110 blank abstracts of disbursements, at 25 cents per 100	28	46 13
P. S. Duval & Son	Transferring and printing 12.450 copies, each, of 11 plates of meteorology, to illustrate Report of Pacific Railroad Surveys, (136,950 plates,) at 60 cents per 100		821 70

J. & R. Kingsland	31,304 pounds plate paper, at 20 cents per pound		6,260 80
S. Seibert	Engraving on copper 14 plates of geological sections, to illustrate Report of Pacific Railroad Surveys, at $45 each	630 00	
	Cr., by this amount charged to House of Representatives	315 00	
			315 00
J. Shillington	Newspapers		606 25
J. Shillington	Dies, &c., viz:		
	3 dies, at $2	6 00	
	4 ... do	8 00	
	1 ... do	2 00	
	6 sets of pads, at $1	6 00	
	1 bottle, each, of red and black ink	10 00	
	4 brushes, at 50 cents	2 00	
	1 bottle sweet oil and turpentine	37½	
	4 dies, at $2	8 00	
	1 ... do	2 00	
	17 ... do	34 00	
	4 handles for dies, at $4	16 00	
	3 dies, at $2	6 00	
			100 37½
J. Shillington	Stationery, viz:		
	1 papier maché inkstand	2 75	
	1 ... do	3 25	
	1 dozen India rubber rulers, 16 inches	5 50	
			11 50
James Ackerman	Transferring and printing 12,400 copies, each, of 10 plates of fishes, to illustrate Report of Pacific Railroad Surveys, (124,000 plates,) at 60 cts., per 100		744 00
John Espy	Binding 283 copies Congressional Globe, 3d sess. 34th Congress, half Russia, at 39½ cts.	111 78	
	380 copies Appendix and Congressional Globe, half Russia, at 38 cts	144 40	
			256 18
Sarony & Co	Lithographing and printing in colors 6,400 copies *fac simile* of Japanese drawings, to illustrate Report of Japan Expedition		222 53
N. Orr & Co	Engraving 7 wood cuts, to accompany Report of Pacific Railroad Surveys—1 a $5, 1 at $8, 4 at $20, and 1 at $35	128 00	
	Engraving 2 cuts for Report of Japan Expedition—1 at $3 50 and 1 at $6	9 50	
		137 50	
	Cr., by this amount charged to and paid by House of Representatives	68 75	
			68 75

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
C. M. Keys	81½ cords hickory wood, at $7 47		$608 80
Kinsloe & Rice	Newspapers		8 50
S. De Camp	Binding 1,575 copies Congressional Globe, 1st and 2d sess. 34th Congress, at 39 cts.		614 25
A. Sergeant	Binding, 34th Congress, viz:		
	37 copies vol. 17, Sen. Docs., 4to, at $1 20	$44 40	
	184 do 17 do at 78 cts.	143 52	
	150 do 14 do at $1 20	180 00	
	100 do 7 Ho. Ex. Docs., 4to, at $1 20.	120 00	
	446 do 14 Sen. Docs., at 78 cents	347 88	
			835 80
J. A. Howells & Co	Newspapers		2 00
J. C. McGuire	Binding, viz:		
	4,000 copies Pacific Railroad Reports, quarto, vol. 2, 2d session 33d Congress, at 75 cents	3,000 00	
	15,000 copies Patent Office Report, (Mechanical,) vol. 2, 1856, at 12½ cents	1,875 00	
	1,000 copies Commercial Statistics, vol. 1, quarto, at 75 cents	750 00	
	5,000 copies Report on Camels, &c., at 12½ cents	625 00	
			6,250 00
R. W. Gibbes	Newspapers		3 50
Wm. Roberts	Engraving on wood 2 views to illustrate Report Pacific Railroad Surveys, at $45	90 00	
	Credit, by half paid by House of Representatives	45 00	
			45 00
D. R. McNair	Hire of 3 horses and wagons, for July, 1857, 31 days, at $2 each		186 00
D. Conroy	Hire of horse for use of office of Secretary Senate, for July, 1857, 31 days, at $1 50 per day		46 50
A. E. Ragan	Son, as page, for July, 1857, 31 days, at $2 40		74 40
E. V. Campbell	Watchman in the crypt, for July, 1857		33 33
C. W. C. Dunnington	Police of the Capitol, for July, 1857	72 50	
J. L. Wirt	do	55 00	
A. K. Arnold	do	55 00	
Jas. T. Ball	do	55 00	
S. J. Johnson	do	55 00	

W. H. Thompson	do	55 00	
Thomas C. Wells	do	55 00	
R. D. Slater	do	55 00	
H. Dodson	Laborer, carrying stationery, cleaning floors, &c., for July, 1857, 27 days, at $1 20		457 50
Van Ingen & Snyder	112 pages electrotypes, illustrations of machinery, for Report of Commissioner of Patents, at $2 per page	224 00	32 40
	92 pages electrotypes of birds, animals, and tool houses, for Report of Commissioner of Patents, at $2	184 00	
	30 electrotype cuts, for Report of Pacific Railroad Surveys, at $1	30 00	
	14 quarto pages electrotype, fac simile of Japanese treaty, for Report of Japan Expedition, at $3	42 00	
	8 packing boxes for same	4 80	
		484 80	
	Cr., by this amount charged to House of Representatives	323 80	
			161 00
Van Ingen & Snyder	Drawing and engraving on wood 4 pages of wood diagrams, to illustrate Report of Commissioner of Patents for 1856, at $35 per page	140 00	
	Cr., by this amount charged to House of Representatives	112 00	
			28 00
Selmar Seibert	Engraving on copper 10 quarto pages of palæontology, to illustrate Report of Pacific Railroad Surveys, at $45 each	450 00	
	Cr., by half the above charged to House of Representatives	225 00	
			225 00
J. Dodson	111 buckets of paste, for use of Senate, from May 1 to July 31, 1857, at $1 each		111 00
James Ackerman	Transferring and printing 12,400 copies, each, of 7 plates of botany, to illustrate Report of Pacific Railroad Surveys, 86,800 plates, at 60 cents per 100		520 80
P. Fleming	Hack hire, viz:		
	Hire of carriages for reception of President United States, by order of committee of arrangements of the Senate	20 00	
	Same for President elect, committee of arrangements, &c	100 00	
			120 00
John Espey	Binding 650 copies Congressional Globe, 3d session 34th Congress, half Russia at 39½ cents		256 75
A. Sergeant	Binding, 3d session 34th Congress, viz:		
	140 copies Senate Miscellaneous Documents, at 60 cents	84 00	
	446 copies Senate Miscellaneous Documents, at 39 cents	173 94	
			257 94

STATEMENT—Continued.

To whom paid.	For what object	Amount.	Total.
Jessup & Moore	Stationery, viz:		
	102 reams 19 by 24 Manilla paper, at $2 49	$253 93	
	40 reams 21½ by 28½ Manilla paper, at $3 24	129 60	
			$383 58
Charles Dean	1,293 pounds large twine, at 35 cents		452 55
A. A. Little	Newspapers		3 00
W. A. Griffith	Hearths and fireplaces in Senate chamber and ante-rooms, viz:		
	20 feet polished black marble slips and jams, at $1 60 per foot	32 00	
	4 pieces soapstone, 20 feet 6 inches, at $1 60 per foot	32 80	
	11½ days' work of 2 men, at $6	69 00	
	Mortar, plaster, &c	7 00	
			140 80
John Pettibone	53 bushels ice, at 50 cents		26 50
A. Sergeant	Binding, 2d session 34th Congress, viz;		
	50 copies volume 17, part 3, Senate Documents, 4to, at $1 20	60 00	
	90 do 13, part 3 do do	108 00	
	90 do 11, part 3, House Executive Documents, 4to, at $1 20	108 00	
	90 do 12, part 2 do do	108 00	
			384 00
John Espey	Binding 569 copies Congressional Globe, 3d session 34th Congress, half Russia, at 39½ cents		224 75
Simkins, Durisse & Co	Newspapers		1 25
J. D. Baldwin	do		2 89
McFarland & Jenks	do		1 34
John M. Coe	do		2 75
W. D. Wallach	Advertising, viz:		
	Proposals for binding	11 25	
	Proposals for stationery	75 00	
	Proposals for wood and coal	6 00	
			92 25
D. R. McNair	Hire of 3 wagons and horses, for August, 1857, 31 days, at $2		186 00
C. W. C. Dunnington	Police of Capitol, for August, 1857	72 50	

J. L. Wirt	do do	55 00	
A. R. Arnold	do do	55 00	
S. J. Johnson	do do	55 00	
J. T. Ball	do do	55 00	
Wm. H. Thompson	do do	55 00	
Thos. C. Wells	do do	55 00	
R. D. Slater	do do	55 00	
			457 50
D. Conroy	Hire of horse, for use of office Secretary of Senate, for August, 1857, 31 days, at $1 50		46 50
A. E. Ragan	For son, as page, for August, 1857, 31 days, at $2 40		74 40
H. Dodson	Laborer, carrying stationery, &c., for August, 1857, 26 days, at $1 20		31 20
E. V. Campbell	Watchman in the crypt, for August, 1857		33 33
Bowne & Co	Stationery, viz:		
	10 reams small white quarto post, gilt and plain, at $3 24	32 40	
	25 reams white vellum large note, at $2 48	62 00	
	2 dozen ivory handled erasers, at $2 49	4 98	
	6 gross Faber's round pencils, at $4 24	25 44	
	50 dozen small barrel pens, at 19 cents	9 50	
	6 dozen 4-bladed penknives, buck handles, at $14 50	87 00	
	6 glass inkstands, with glass stoppers, at $9 50	57 00	
			278 32
J. Dodson	Washing 617 towels, at 6¼ cents each		38 56
A. Sergeant	Binding, 2d session 33d Congress, viz:		
	50 copies vol. 13, part 4, Senate Documents, quarto, at $1 20	60 00	
	90 do 11, part 4, House Ex. Docs do	108 00	
	443 do 13, part 3, Senate Documents, quarto, at 79 cents	349 97	
	443 do 13, part 4 do do	349 97	
			867 94
J. C. McGuire	Binding, viz:		
	6,000 copies Mechanical Patent Office Report, vol. 2, 1856, at 12½ cents	750 00	
	10,000 do do vol. 3 do	1,250 00	
	10,000 copies Smithsonian Report, 3d session 34th Congress, at 12½ cents	1,250 00	
	5,000 copies maps accompanying President's message, 3d session 34th Congress, quarto, at 75 cents	3,750 00	
			7,000 00
N. R. Stimpson	Advertising in New York Day Book proposals for "lithographing and printing"		15 75
S. Masi	Attending clocks in various offices and Senate chamber for 3 months ending September 1		50 00
S. De Camp	Binding 1,125 copies, parts 1 and 2, of Congressional Globe, 1st and 2d sessions 34th Congress, at 39 cents		438 75

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
W. A. Griffith	Repairing fireplace and re-setting marble mantel in room of Committee on District of Columbia	$18 00	
	Iron bar for brick arch	2 00	
			$20 00
Harvey & Hughes	Newspapers		2 00
A. Sergeant	Binding, viz:		
	63 copies volume 13, part 4, Senate Documents. 2d session 33d Congress, at $1 20	75 60	
	27 do 13 4 do do do	32 40	
	63 do 14 2 do do do	75 60	
	27 do 14 2 do do do	32 40	
	224 do 14 2 do do do 79 cents	176 96	
	63 do 2 do 3d session 34th Congress, at 60 cents	37 80	
	27 do 2 do do do	16 20	
	224 do 2 do do do 39 cents	87 36	
	50 do 2 do do do 60 cents	30 00	
			564 32
John Espey	Binding 426 volumes Appendix to Congressional Globe, half Russia, at 38 cents		161 88
Butler & Bryan	Stationery, viz:		
	6 dozen pints black ink, at $2	12 00	
	2 dozen half pints black ink, at $1 25	2 50	
	1 dozen copying ink	2 00	
	25½ M white laid extra and heavy envelopes, at $5 35	136 42	
	5 M white laid extra heavy large letter, at $3 60	18 00	
	5 M amber laid and heavy letter size, at $2 85	14 25	
	10 M amber laid and heavy note, at $2	20 00	
	10 M amber laid and small note, at $2	20 00	
	6 M gold heavy document, at $3 20	19 20	
	251½ M gold heavy document, at $3 20	804 80	
			1,049 17
John Espey	Binding 49 copies Congressional Globe, half Russia, at 39½ cents, (3d session 34th Congress)	19 35	

	643 copies Appendix to Congressional Globe, half Russia, at 38 cents		244 34	
				263 69
John Espey	Binding 600 copies Congressional Globe, 3d session 34th Congress, half Russia, at 39½ cents			237 00
John P. Heiss	Advertising in the "States" proposals for wood and coal			5 25
John Espey	Binding 883 copies Appendix to Congressional Globe, 3d session 34th Congress, half Russia, at 38 cents			335 54
R. B. Griffin	Carpenters' work, viz:			
	4 packing boxes, at $2 75	11 00		
	Planing off labels, (folding room,) and 1 night lock	2 75		
	1 lock for packing box	75		
	Shelving for document room	54 25		
	Slatting rooms for books	180 55		
			249 30	
	Cleaning and varnishing furniture for Secretary's office, viz:			
	R. B. Griffin, 25 days, at $2 50	62 50		
	S. Taylor, 25 days, at $2	50 00		
	J. Summers, 25 days, at $2	50 00		
	2 gallons varnish and half gallon turpentine	7 50		
	1 pound pumice stone	30		
			170 30	
	Making 2 new desks and chairs for Senate chamber	242 25		
	Deduct amount paid in last account for chairs	100 00		
			142 25	
	Removing boxes in rotundo, and putting up slatting		6 60	
				567 85
John Richards	Newspapers			13 34
C. W. Brewster & Son	do			2 00
S. De Camp	Binding 675 copies Congressional Globe, 1st and 2d sessions 34th Congress, at 39 cents			263 25
J. C. McGuire	Binding, viz:			
	226 copies Commercial Relations, volume 1, at 75 cents		169 50	
	500 copies Medical Statistics, at 75 cents		375 00	
	5,000 copies Mechanical Report Patent Office, volume 3, 1856, at 12½ cents		625 00	
	6,000 do do 2 do		750 00	
	2,000 copies maps to accompany President's message, 3d session 34th Congress, at 75 cents		1,500 00	
	2,000 copies Pacific Railroad Report, volume 2, at 75 cents		1,500 00	
	2,000 copies Perry's Report, volume 2, at 75 cents		1,500 00	
				6,419 50

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
A. Sergeant	Binding, 34th Congress, viz:		
	446 copies volume 19, part 3, Senate Documents, 4to, sheep, at 78 cents	$347 88	
	446 do 3 do do 39 cents	173 94	
	184 do 2 do do do	71 76	
	90 do 19 do do calf, at $1 20	108 00	
			$701 58
Jessup & Moore	129 reams, 19 by 24, manilla paper, at $2 49		321 21
John Espey	Binding 921 copies Appendix to Congressional Globe, 3d session 34th Congress, at 38 cents		349 98
Clagett, Newton, May & Co	5¼ yards blue cloth for covering desks, &c., at $3 50	18 38	
	10 do do do	35 00	
			53 38
S. De Camp	Binding, viz:		
	2 volumes, parts 1 and 2, Senate Journal 34th Congress, at $5	10 00	
	Half ream super royal writing paper	11 00	
	Ruling the same	4 50	
	Ruling and binding 20 index books, (for document room)	20 00	
	Ruling and binding 4 books, 3 indexes, each, at $3	12 00	
	12 morocco projecting tabs for same, at 50 cents	6 00	
	Ruling and binding 2 books, 2 indexes, each, at $3	6 00	
	4 morocco tabs for same	2 00	
	6 side lettering for above, at 50 cents	3 00	
	2 cap index books	2 00	
	Ruling and binding 8-quire demy "Reference Book," 35th Congress	14 00	
	Prepared heading for Reference Book, at 75 cents per quire	6 00	
	42 morocco projecting tabs, list of committees for Reference Books, at 37½ cents	15 75	
	Ruling and binding in full morocco index for Reference Books	4 50	
	Ruling and binding 8 quires demy Senate and House bills, 35th Congress	14 00	
	Prepared heading for same	6 00	
	Morocco projecting tab for same	50	
			137 25
S. De Camp	Binding 221 volumes Congressional Globe, 3d session 34th Congress, at 39 cents		86 19

J. C. McGuire	Binding, viz:		
	3,000 copies maps accompanying President's message, 3d session 34th Congress, at 75 cents	2,250 00	
	10,000 copies Agricultural Patent Office Report, 3d session 34th Congress, at 12½ cts.	1,250 00	
	1,000 copies Pacific Railroad Report, volume 2, at 75 cents	750 00	
	224 copies Gilliss' Report, volume 6, at 75 cents	168 00	
	2,000 copies Mechanical Patent Office Report, volume 3, at 12½ cents	250 00	
	2,000 copies Standard Weights, &c., at 12½ cents	250 00	
			4,918 00
A. Sergeant	Binding, viz:		
	50 copies volume 14, part 2, Senate Documents, 4to, 2d session 33d Congress, at $1 20	60 00	
	219 do 14, part 2, Senate Documents, sheep, at 78 cents	170 82	
	50 do 19, part 3, Senate Documents, calf, 1st and 2d sessions, at $1 20	60 00	
	140 do 3, Senate Documents, calf, at 60 cents	84 00	
	222 do 10, Senate Documents, sheep, at 39 cents	86 58	
	90 do 10, House Executive Documents, calf, 1st and 2d sessions, at $1 20	108 00	
	38 do 2, Senate Documents, sheep, 3d session, at 39 cents	14 82	
	10 do 2, Senate Documents, sheep, 3d session, at 39 cents	3 90	
	10 do 3, Senate Documents, 3d session 34th Congress, sheep, at 39 cents	3 90	
	10 copies Senate Miscellaneous Documents, 3d session 34th Congress, sheep, at 39 cts.	3 90	
	80 copies House and Senate Documents, 4to, sheep, viz: 10 copies each of volumes 19, part 3; volume 14, part 2; volume 13, part 3; volume 13, part 4; volume 12, part 2; volume 11, part 3; volume 11 part 4; volume 10, part 3, at 78 cents per volume	62 40	
			658 32
C. W. C. Dunnington	Police of Capitol, for September, 1857	72 50	
John L. Wirt	do	55 00	
A. K. Arnold	do	55 00	
Samuel J. Johnson	do	55 00	
James T. Ball	do	55 00	
W. H. Thompson	do	55 00	
R. D. Slater	do	55 00	
Thomas C. Wells	do	55 00	
			457 50
D. R. McNair	Hire of 3 horses and wagons, for September, 1857, 30 days, at $2		180 00
D. Conroy	Hire of horse for use of office Secretary Senate, for Sept., 1857, 30 days, at $1 50		45 00
A. E. Ragan	For son, as page, for September, 1857, 30 days, at $2 40		72 00
E. V. Campbell	Watchman in the crypt, for September, 1857		33 33
H. Dodson	Laborer, carrying stationery, in September, 1857, 26 days, at $1 20		31 20

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
G. Scott Roe	Stationery, viz:		
	150 reams white soft wrapping paper, at 45 cents	$67 50	
	10 reams extra large common note paper, at $2 38	23 80	
	60 reams white laid large note paper, at $2 25	135 00	
	30 do do 2 25	67 50	
	2 dozen blank books, cap size, 5 quires, at $24	48 00	
	6 dozen memorandum books, octavo, at $6 75	40 50	
	6 dozen 16mo memorandum books, at $4 50	27 00	
	100 cards bronze pens, at 15 cents	15 00	
	60 dozen bronze New York commercial pens, at 12 cents	7 20	
	100 cards double spring pens, at 16 cents	16 00	
	2 dozen pint bottles black ink, at $2	4 00	
	2 dozen half pint bottles black ink, at $1 50	3 00	
	7 dozen morocco covered trunks, at $29 75	208 25	
	6 dozen embossed paper boxes, at $2 25	13 50	
	2 do do 1 75	3 50	
	1 do do 1 50	1 50	
	5,000 white adhesive envelopes, at $3 35	16 75	
	2,500 embossed card envelopes, at $1 75	4 37	
			$702 37
J. Dodson	86 buckets paste, for use of folding room, from August 1 to Sept. 30, 1857, at $1		86 00
Y. P. Page	Cash paid for hack hire, &c., for use of the Senate		20 00
C. M. Keys	27¾ cords hickory wood, at $7 47		206 67
W. A. Harris	Advertising in Washington Union proposals for binding		9 00
A. Sergeant	Binding, viz:		
	90 copies vol. 1 Senate Docs., 3d session 34th Congress, calf, at 60 cents	54 00	
	90 do 9 do do 60 do	54 00	
	90 do 3 do do 60 do	54 00	
	224 do 1 do do 39 do	87 36	
	224 do 9 do do 39 do	87 36	
	184 do 9 do do 39 do	71 76	

	50....do....1.....do.....do.....60..do.....		30 00	
	50....do....9.....do.....do.....60..do.....		30 00	
				468 48
R. B. Griffin.....	Repairing furniture, &c., viz:			
	2 new box tops for stationery room.....		3 25	
	1 key for night lock, (folding room).....		50	
	1.....do.....(post office).....		50	
	1 new frame for screen, (Senate chamber).....		3 00	
	Putting shelves in case, (Secretary's office).....		5 50	
	2 new keys for Vice President's chamber.....		50	
	Cleaning and varnishing furniture in Vice President's chamber and committee rooms, viz:			
	R. B. Griffin, 26 days, at $2 50.....	$65 00		
	S. Taylor, 26 days, at $2.....	52 00		
	J. Summers, 26 days, at $2.....	52 00		
	1 gallon varnish and turpentine.....	3 50		
			172 50	
				185 75
Butler & Bryan.....	Stationery, viz:			
	4½ M white laid extra adhesive heavy official envelopes, at $5 25.....		24 08	
	44 M gold heavy document envelopes, at $3 20, adhesive.....		140 80	
	248½ M .....do..... at $3 20, unadhesive.....		795 20	
	1 M white laid XX heavy, 9¼×14¼, unadhesive.....		60 00	
				1,020 08
John Pettibone.....	26 bushels ice, from August 31 to September 30, 1857, at 50 cts.....		.....	13 00
John Espey.....	Binding 432 copies Congressional Globe, 3d sess. 34th Congress, half Russia, at 39½ cts.		.....	170 64
Ames, Herrick, Barnes & Rhoads.....	Stationery, viz:			
	6 dozen glass paper weights, at $7 50.....		45 00	
	2 dozen bronze paper weights, at $8.....		16 00	
	10 reams extra superior cream laid legal cap, at $3 75.....		37 50	
	5 reams ditto, cap, plain, at $3 25.....		16 25	
	6 dozen cap folders, at $13 50.....		81 00	
	12 gross Perry's double patent large barrel pens, at $3 50.....		42 00	
	4 pounds black rubber, at $1.....		4 00	
	2 pounds white rubber, at 90 cents.....		1 80	
	1 dozen clips, No. 262.....		5 00	
	2 8/12 dozen knives, at $13 50.....		38 25	
	2 dozen scrap books, at $10 50.....		21 00	
	6 gross Perry's double patent large barrel pens, at $3 50.....		21 00	

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
Ames, Herrick, Barnes & Rhoads—Con.	5½ gross cards raven black pens, at $2	$10 67	
	2 gross Perry's small barrel double patent pens, at $2 75	5 50	
	5 gross Perry's 27 barrel double patent pens, at 37½ cents	1 88	
	4 gross Rhoads' amalgamation pens, at 75 cents	3 00	
	4 gross Rhoads' Q pens, at 31¼ cents	1 25	
	5 gross Rhoads' 499 pens, at 31¼ cents	1 56	
	3 gross Washington medallion pens, at 75 cents	2 25	
	5 gross penholders, No. 206, at $2	10 00	
	1 gross small penholders	1 50	
	2 gross large penholders, at $1 75	3 50	
	4 gross silver mounted penholders, at $3	12 00	
	3 gross rubber mounted penholders, at $4 50	13 50	
	1 dozen spring inkstands	4 50	
	2½ dozen spring inkstands, at $3 75	9 37	
	½ gross white blotting paper, at $4	2 00	
	9 dozen boxes tapers, at $3	27 00	
	6 dozen cocoa sand boxes, at $2 50	15 00	
	6 dozen cocoa wafer boxes, at $2 13	12 78	
	20 pounds wafers, in canisters, at 60 cents	12 00	
	20 pounds wafers, in 2-ounce boxes, at 60 cents	12 00	
	1 dozen pounce	75	
	1 dozen boxes for pounce	1 50	
	1 gross elastic bands	3 00	
	1 dozen round ebony rulers, 15-inch	3 50	
	2 dozen mucilage No. 2 cap, at $2	4 00	
	8 dozen inkstands, at $30	240 00	
	8 dozen scissors, 4½-inch, at $4 75	38 00	
	20 pounds wax tapers, at $1	20 00	
	20 reams amber Bath, quarto, ruled and gilt, at $4 75	95 00	
	20 reams note ditto, at $3	60 00	
	25 reams Whatman's cap, ruled, at $3 50	87 50	

	3 dozen mucilage No. 2, at $2	6 00	$1,049 31
Richard Brodhead	Newspapers		16 00
Charles Dean	Stationery, viz:		
	57 pounds bagging twine, at 45 cents	25 65	
	91 pounds small twine, at 62 cents	56 42	
	780 pounds large twine, at 35 cents	273 00	
	118 pounds small twine, at 62 cents	73 16	428 23
J. C. McGuire	Binding, viz:		
	3,000 copies maps to accompany President's message and documents, 3d session 34th Congress, at 75 cents	2,250 00	
	1,500 copies Pacific Railroad Report, vol. 3, at 75 cents	1,125 00	
	1,000 do vol. 4 do	750 00	
	500 copies, vol. 2, Report of Japan Expedition, at 75 cents	375 00	4,500 00
Butler & Bryan	Stationery, viz:		
	70,000 white laid extra heavy government adhesive envelopes, at $3 15	220 50	
	61,000 do do do at $2	122 00	342 50
A. J. McGarity	400 bushels charcoal, at 10 cents		40 00
W. D. Wallach	Newspapers		58 97
John Espey	Binding 340 copies Congressional Globe, 3d session 34th Congress, half Russia, at 39½ cents		134 30
Estate of R. Farnham	Stationery, viz:		
	2 dozen B. and W. ink, at $1 25	2 50	
	2 dozen tuck bank books, at $1 50	3 00	
	1 do	1 25	
	1 spring inkstand	25	
	1 ledger	2 00	
	2⅓ reams note paper, at $3	6 50	
	500 envelopes	1 50	
	1,000 white laid envelopes	3 00	
	3 reams ruled note paper, at $2 50	7 50	
	1,000 envelopes	3 00	
	do	3 00	
	1 ream double thick English note paper	3 25	
	1 diary	50	
	1 ream ruled note paper	2 50	

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
Estate of R. Farnham—Continued	Stationery, viz:		
	1 dozen memorandum books	$2 00	
	20 reams white laid Bath paper, ruled and gilt, at $3	60 00	
	30 reams wove ditto, at $3 87	116 10	
	4¾ reams ditto plain, at $3 87	18 38	
	4 reams fancy note paper, at $2	8 00	
	2 reams fancy note paper, at $1 50	3 00	
	8 dozen pearl folders, at $12 50	100 00	
	1 dozen bronze letter clips	3 75	
	6 dozen cut glass inkstands, at $6	36 00	
	100 dozen red tape, No. 23, at 27 cents	27 00	
	50 do 19, at 23 cents	11 50	
	96 dozen platina pens, at 5 cents	4 80	
	48 dozen gutta percha pens, at 3 cents	1 44	
	175 cards Perry's 3-point pens, at 20 cents	35 00	
	100 cards double patent 3-point pens, at 20 cents	20 00	
	50 cards underspring 3-point pens, at 20 cents	10 00	
	36 cards Pratt's pens	2 16	
	4 dozen bottles carmine ink, at $1 50	6 00	
	6 dozen boxes fancy wax, at $1 25	7 50	
	12 dozen boxes transparent wafers, at 40 cents	4 80	
	3,000 fancy note envelopes, at $2 50	7 50	
	2,500 embossed card envelopes, at $2 25	5 62	
	4 reams engrossing paper, at $14	56 00	
	600 dozen red tape, No. 13, at 13 cents	78 00	
	96 dozen electro pens, at 16 cents	15 36	
	10,000 quills, No. 80, at $20	200 00	
	12 dozen ivory stamps, at $5 50	66 00	
	240 pounds black sand, at 4 cents	9 60	
	12 dozen pen-wipers, at $3 50	42 00	
			$997 26

Estate of R. Farnham	Books, viz:		
	Vols. 6 and 7 Opinions Attorneys General, at $3	6 00	
	Vol. 5, in exchange	1 50	
			7 50
A. Sergeant	Binding, 3d session 34th Congress, viz:		
	446 copies vol. 10, Senate Docs., sheep, at 39 cents	173 94	
	446 do 11 do	173 94	
	224 do 13 do	87 36	
	38 do 9 do	14 82	
	38 do 13 do	14 82	
	140 do 10, Senate Docs., calf, at 60 cents	84 00	
	140 do 11 do	84 00	
			632 88
F. W. Turner	Newspapers		5 98
J. C. McGuire	Binding, viz:		
	1,935 copies maps to accompany President's message, 3d session 34th Congress, at 75 cents	1,451 25	
	10,000 copies Agricultural Report Patent Office, 1856, at 12½ cents	1,250 00	
	2,400 copies Pacific Railroad Report, vol. 2, at 75 cents	1,800 00	
	1,000 copies Pacific Railroad Report, vol. 3, at 75 cents	750 00	
			5,251 25
Jessup & Moore	Stationery, viz:		
	286 reams Manilla paper, 19 by 24, at $2 04	583 44	
	51½ do 21 by 25, at $2 47	116 90	
	50 do 21½ by 28½, at $2 66	133 00	
			833 34
Adeline Sergeant	Binding, 3d session 34th Congress, viz:		
	498 copies vol 5, Senate Docs., sheep, at 39 cents	194 22	
	100 do 13 do	39 00	
	80 vols. Senate Docs., sheep, at 39 cents	31 20	
			264 22
John Espey	Binding 398 copies Congressional Globe, 3d session 34th Congress, half Russia, at 39½ cents		157 21
W. A. Harris	Newspapers		394 10
G. Scott Roe	Stationery, viz:		
	50 reams white vellum, large note, ruled and gilt, 4 pounds per ream, at $3	150 00	
	30 reams white, small, ruled and gilt, at $3	90 00	
	10 reams same, unruled, at $3	30 00	
	12 dozen 4-blade penknives, at $23 50	282 00	

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
G. Scott Roe—Continued	8 dozen 2-blade penknives, at $12	$96 00	
	6 dozen cut glass inks, at $3 50	21 00	
	6 dozen cut glass sands, at $3 50	21 00	
	12 dozen boxes fancy motto wafers, at 38 cents	4 56	
	21 reams white laid quarto post paper, gilt and plain, at $3 38	70 98	
			$765 54
D. R. McNair	Hire of 3 horses and wagons, for October, 1857, 31 days, at $2 each		186 00
D. Conroy	Hire of horse for use of office of Secretary Senate, for October, 1857, 31 days, at $1 50		46 50
C. W. C. Dunnington	Police of Capitol, for October, 1857	72 50	
W. L. Wirt	do do	55 00	
A. K. Arnold	do do	55 00	
S. J. Johnson	do do	55 00	
J. T. Ball	do do	55 00	
W. H. Thompson	do do	55 00	
Thomas C. Wells	do do	55 00	
R. D. Slater	do do	55 00	
			457 50
A. E. Ragan	For son, as page, for October, 1857, 31 days, at $2 40		74 40
H. Dodson	Services as laborer, scrubbing floors, &c., during month of Oct., 1857, 31 days, at $1 20		37 20
R. Carter	do do do do $1 20		37 20
E. V. Campbell	Watchman in crypt, for October, 1857, at the rate of $300 per annum		33 33
John Espey	Binding 232 copies Congressional Globe, half Russia, 3d sess. 34th Cong., at 39½ cents		91 64
Amelia Spencer	Making 2 dozen towels	3 00	
	Washing same	1 50	
			4 50
John Espey	Binding 126 copies Congressional Globe, 3d sess. 34th Cong., half Russia, at 39½ cents		49 7
R. B. Griffin	Carpenters' work, viz:		
	2 new keys, (Senate)	50	
	1 packing box, (Senate)	2 75	
	Mending 6 chairs	4 40	
	Covering and varnishing screen, (office)	1 25	
	4 new banisters for desks, (Senate)	1 25	

	Putting up scaffold for curtains, (Senate)		3 50	
	Repairing 19 inkstand boxes, (Senate)		1 75	
	Repairing screen in reception room		2 00	
	New lock for box, (Senate)		50	
	New top for box for stationery		50	
	2 gross screws for desks and screens		1 25	
	1½ gallon varnish, ½ gallon turpentine, and 1 pound pumice stone		5 75	
	Varnishing and cleaning desks, viz:			
	R. B. Griffin, 27 days, at $2 50	$67 50		
	John Summers, 27 days, at $2	54 00		
	B. Desenback, 24 days, at $2	48 00		
			169 50	
	Making mahogany case for Secretary's office		147 60	
				342 50
Clarke, Fellows & Co	Newspapers			5 17
John Espey	Binding 289 copies Congressional Globe, 3d session 34th Congress, half Russia, at 39½ cents		114 15½	
	2 copies Appendix to same, at 38 cents		76	
				114 91½
C. Warriner	1 glass shade and stand for clock in Vice President's chamber			24 00
C. M. Keys	43¾ cords hickory wood, at $7 47 per cord		326 81	
	Sawing extra cuts, making, or equal to, 25 cords, at 75 cents		18 75	
				345 56
Selmar Seibert	Account of engraving on copper 8 maps and profiles, to accompany Report of Pacific Railroad Surveys, &c		4,200 00	
	Cr., by half paid by House of Representatives		2,100 00	
				2,100 00
O. W. Griffiths	Nautical Magazine and Naval Journal for the Committee on Commerce			5 00
I. Contnor	Upholstering, viz:			
	Cleaning and putting down carpets in Senate chamber, vestibule, Vice President's and ante chambers, and putting up all the curtains in same		240 00	
	Cleaning and putting down carpets in 20 committee rooms, including post office, at $7 each		140 00	
	Making 572¼ yards carpet, at 20 cents		114 45	
	Moving and replacing furniture in 8 rooms, at $1 50 each		12 00	
	Taking off and refluting 22 screens in Senate chamber		30 00	
	Taking off and box fluting 7 large screens in Senate chamber		28 00	
	Uncovering and recovering Vice President's chair, in Senate chamber, with red morocco, including materials		20 00	

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
I Contnor—Continued	Upholstery, viz:		
	Cleaning and putting down carpets in ladies and gentlemen's gallery and stairway	$30 00	
	Cleaning and putting down extra carpets in gentlemen's gallery	5 00	
	Covering 3 sofas in Senate chamber, at $5 each	15 00	
	Covering sofa in Sergeant-at-arms' room	5 00	
	Taking off and box fluting large screen in committee room, Private Land Claims	4 00	
	Taking off and recovering patent chair in Vice President's chamber, including materials	10 00	
	Taking off and covering seats and backs, cross seats and benches, in ladies' gallery, and gimping the same	25 00	
	Making and putting up strip fluting in ladies' gallery	7 00	
	Cleaning and putting down carpets in folding room, and moving and replacing books	10 00	
	Fitting and repairing carpets in Senate chamber	5 00	
	Taking off and regimping 30 chairs and 4 sofas in Vice President's and ante chambers, at $1 25 each	42 50	
	Overhauling and repairing all the curtains	7 00	
	Fitting and putting down carpets in document room, covering tables with oil-cloth, taking off fluting and putting up new	18 00	
	Taking off old and putting new backs on 13 union chairs in committee rooms, including materials, at $1 25 each	16 25	
	Ditto, repairing 9 chairs, at 25 cents	2 25	
	Taking off and recovering 7 chair seats in Senate chamber with morocco, including materials, at $3	21 00	
	To making 3 leather and 2 hair cloth cushions, at $5 each, including materials	25 00	
	Covering 13 chair seats in committee rooms with hair cloth, at $1 50 each, including materials	19 50	
	Covering 1 large arm-chair with hair cloth	6 00	
	Repairing and covering backs and arms of 3 chairs in committee rooms, at $1 50 each	4 50	
	Repairing, fitting, and putting down cocoa matting in long passage	8 00	
	Cleaning and putting down carpet in cloak room	3 00	
	Cleaning and putting down carpets in Sergeant-at-arms' room and entrance	5 00	
	Putting down oil-cloth in entrance to ladies' gallery, vestibule, post office, Committee on Pensions, and Committee on Revolutionary Claims	12 50	

	Cleaning out 18 committee rooms, at 50 cents each		9 00	
	Repairing and putting up blinds in committee room on Military Affairs		2 50	
	Repairing carpet in same room		5 00	
	Tacks, gimp, and nails		12 94	
	Beeswax		75	
			921 14	
	Credit, by cash, August 31, 1857	$112 00		
	Do ..... September 25, 1857	75 50		
	Do ..... October 6, 1857	58 50		
	Do ..... October 16, 1857	68 50		
	Do ..... October 28, 1857	240 00		
			554 50	
				366 64
S. Masi	Cleaning and attending clocks in all the offices of the Senate for 3 months to December 1, 1857			50 00
D. R. McNair	Hire of 3 horses and wagons, for November, 1857, 30 days, at $2			180 00
D. Conroy	Hire of horse for use of Senate, for November, 1857, 30 days, at $1 50			45 00
C. W. C. Dunnington	Police of Capitol, for November, 1857		72 50	
A. K Arnold	do		55 00	
S. J. Johnson	do		55 00	
James T. Ball	do		55 00	
W. H Thompson	do		55 00	
Thomas C. Wells	do		55 00	
R. D. Slater	do		55 00	
J. L. Wirt	Police of Capitol, for 17 days in November, 1857		31 16	
				433 66
A. E. Ragan	Son, as page, for November, 1857, 30 days, at $2 40			72 00
E. V. Campbell	Watchman in the crypt, for November, 1857			33 33
Harry Dodson	Laborer, carrying fuel, &c., during the month of November, 1857			36 00
R. Carter	do ..... do			36 00
J. Dodson	77 buckets paste, for use of folding room, from October 1 to November 30, 1857, at $1			77 00
G. Bailey	Newspapers			20 00
Holden & Wilson	do			10 00
John Pettibone	52 bushels ice, at 50 cents			26 00
S. G. Deeth	2 volumes Commerce and Navigation, 1821 and 1822; 4 volumes Receipts and Expenditures, 1799, 1800, 1817, and 1828, at $5 each			30 00
Scripps, Bross & Spears	Newspapers			8 00
James G. Bennett	do			529 26

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total
Clagett & Dodson	Carpetings, &c., viz:		
	1 door mat	$2 25	
	1 ....do	1 50	
	132¾ yards crimson damask, at $1 25	165 94	
	233½ yards crimson gimp, at 12½ cents	29 19	
	22½ yards enamelled oil-cloth, at 62½ cents	14 06	
	13¼ yards felt carpeting, at $1 25	16 56	
	30 yards 4-4 Venitian carpeting, at $1	30 00	
	25 yards 3-4 ....do ....75 cents	18 75	
	2 pounds thread, at $1 50	3 00	
	2½ yards enamelled oil-cloth, at 87½ cents	2 19	
	21⅞ yards oil-cloth, floor, at $1 25	27 08	
	230¾ yards Brussels carpeting, at $1 37½	317 28	
	422½ yards velvet carpeting, at $1 50	633 75	
	37¾ yards plain Venitian carpeting, at 62½ cents	23 60	
	5¼ yards crimson rep. delaine, at $1 75	9 19	
	42¼ yards cocoa matting, at 62½ cents	26 40	
	5⅜ yards oil-cloth, at $1 25	6 81	
	10 yards green baize, at 75 cents	7 50	
	6½ yards enamelled oil-cloth, at 75 cents	4 88	
	1 sheepskin mat	2 25	
	3 large skeleton mats, 4 by 6 = 72 feet, at 37½ cents	27 00	
	4 slips of thread, at 12½ cents	50	
	3 square rugs, at $15	45 00	
			$1,414 68
Day & Clark	Newspapers		5 00
J Hodgson	....do		5 00
R B. Griffin	Carpenters' work, viz:		
	Putting staple and hook on door, (office)	50	
	Altering shelves in case and making chair seat, (Committee on Finance)	2 50	
	118 labels for desks and cloak room	4 72	
	10 new knobs for desks, (Senate)	75	

	24 new keys for desks, (Senate)		5 00	
	New nosing on table, and covering 3 tables, (Committee on Naval Affairs)		2 50	
	29 new knobs for tables in committee rooms		3 55	
	30 feet of cherry for hearth strips and nosings		2 40	
	Covering doors in Senate		2 50	
	5 knob latches, for water closet; 1 mortise lock with white mineral knob, for post office; and 1 night latch on door, Committee Private Land Claims		9 00	
	Stripping window in clerk's office		50	
	2 large brass knobs, Senate		2 00	
	Covering doors to case, Committee Indian Affairs		2 50	
	Small step ladder, Vice President's chamber		2 75	
	Putting up crib for folding room		10 00	
	Covering doors and foot board in post office, and foot board, vestibule doors		4 00	
	Cleaning and varnishing furniture in ante-chamber and committee rooms, viz:			
	R. B. Griffin, 22 days	$55 00		
	S. Taylor, 20 days	40 00		
	J. Summers, 22 days	40 00		
	L. Densenback, 8 days	16 00		
			151 00	
	2 brass locks, with 15 keys, for office		4 25	
	1 lock for case, Senate		1 00	
	Making slat floor for books, folding room		6 75	
	5 new keys for case, Committee Military Affairs		1 25	
	2 new springs on door, Senate		2 00	
	Fixing water coolers, Senate		1 75	
	Mending and varnishing 15 chairs		7 95	
	Fixing lock, gallery door, and new staple		1 50	
	Putting new hearth strips, and varnishing and replugging hearths		9 00	
				241 62
Clagett, Newton, May & Co.	1 yard beaver cloth		3 50	
	4½ yards blue cloth, at $3 50		15 75	
	2 dozen towels, at $2 50		5 00	
	4⅜ yards blue cloth, at $3 50		15 31	
	7 yards blue cloth, at $3 50		24 50	
	3 dozen towels, at $1 75		5 25	
	1¾ yard blue cloth, at $3 50		6 13	
	6 pieces black crape, at $6		36 00	
				111 44

STATEMENT—Continued.

To whom paid.	For what object.	Amount.	Total.
Ames, Herrick, Barnes & Rhoads	20 fancy glass weights, at $1 12½	$22 50	
	59 fancy glass weights, at 62½ cents	36 87	
	25 reams extra super Congress cap, at $3 50	87 50	
	9 dozen boxes wax matches, at $3	27 00	
			$173 87
William Rice	Newspapers		77 50
			330,413 37
	Deduct amount received from sales of unserviceable furniture		103 20
			330,310 17

RECAPITULATION.

Paid for binding	$85,666 74
Paid for lithographing and engraving	89,882 73
Paid for books	1,210 42
Paid for stationery	14,878 56
Paid for newspapers	3,781 22
Paid for Congressional Globe, and binding the same	39,490 29
Paid for reporting proceedings	23,037 31
Paid for clerks to committees, pages, police, horses, and carryalls	38,411 80
Paid for miscellaneous items	33,951 10

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 151.

RESOLUTION

OF

THE LEGISLATURE OF TENNESSEE,

IN FAVOR OF

The passage of a bill granting a pension to the soldiers of the war of 1812 and of the various Indian wars.

FEBRUARY 9, 1858.—Referred to the Committee on Pensions, and ordered to be printed.

JOINT RESOLUTION to instruct our senators in Congress and request our representatives to aid in the passage of a bill granting a pension to the soldiers of the war of 1812 and of the various Indian wars.

Resolved by the general assembly of the State of Tennessee, That our senators in the Congress of the United States be instructed, and our representatives most respectfully requested, to use all reasonable diligence and exertion to procure the passage through Congress of a bill granting a pension to the soldiers of the war of 1812, and the various Indian wars in which the government has been engaged; and that the governor of the State be respectfully requested to forward a copy of this resolution to the President of the Senate and the Speaker of the House of Representatives in Congress.

Adopted January 7, 1858.

DANL. S. DONELSON,
Speaker of the House of Representatives.
JNO. C. BURCH,
Speaker of the Senate.

I, F. W. M. Burton, secretary of state of Tennessee, do hereby certify the foregoing is a true copy of the original in my office.

In witness whereof, I have hereunto set my hand and affixed the [L. S.] great seal of the State, this 4th of February, 1858.

F. W. M. BURTON,
Secretary of State.

EXECUTIVE DEPARTMENT,
Nashville, Tennessee, February 4, 1858.

SIR: I have the honor to transmit to you, to be laid before the Senate, a joint resolution passed by the present session of the general assembly of the State of Tennessee.

I am, very respectfully, your obedient servant,

ISHAM G. HARRIS.

Hon. JOHN C. BRECKINRIDGE,
President of the United States Senate.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 152.

RESOLUTION

OF

THE LEGISLATURE OF IOWA,

IN FAVOR OF

Granting bounty lands to the volunteers of the Spirit lake expedition, in March, 1857.

FEBRUARY 9, 1858.—Referred to the Committee on Public Lands, and ordered to be printed.

JOINT RESOLUTION to the Senate and House of Representatives of the United States, asking for bounty land warrants for the volunteers of the Spirit lake expedition.

To the Senate and House of Representatives of the United States:

Your memorialists, the general assembly of the State of Iowa, respectfully represent, that whereas, some time in March, 1857, a party of Sioux Indians attacked and destroyed the entire settlement at Spirit lake, in Dickinson county, of this State; and whereas, when the news reached Fort Dodge, a party of over one hundred men immediately put themselves under the command of Major William Williams, and marched to the scene of slaughter to protect the living, (if any had survived the general massacre,) give the dead a Christian burial, and punish the savage intruders; and whereas this party of volunteers endured almost unheard-of hardships, being on the continued march for eighteen days, crossing swollen streams, marching over drifted snow, and over an almost pathless prairie, alike destitute of timber and inhabitants, and this, too, in the most inclement weather, so cold that two of the number, Captain J. C. Johnson and William Burkholder, perished and were lost on the prairie, while all underwent almost unendurable hardships, many being frozen and maimed for life; and whereas, by the self sacrificing perseverance of these men, several families in southern Minnesota were rescued from the perils of savage warfare, and saved from death by starvation, and the victims of Indian butchery were decently interred: Therefore—

Your memorialists petition that you give and grant to each person engaged upon that expedition who received an honorable discharge a military bounty land warrant, calling for one hundred and sixty acres of land, and provide that said warrant can be located upon any land upon which the Indian title is extinguished, has been surveyed, and is not otherwise appropriated.

And your memorialists would further petition that the heirs of Captain J. C. Johnson be given and granted one section of government land, to be selected by said heirs from any land as above described; and that the heirs of William Burkholder be given and granted one section, to be selected by said heirs, as above prayed for in the case of Captain Johnson.

Resolved, That the secretary of state be instructed to forward a copy of the above to Congress.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved January 30, 1858.

RALPH P. LOWE.

OFFICE OF SECRETARY OF STATE,
Des Moines, February 1, 1858.

I, Elijah Sells, secretary of state of the State of Iowa, hereby certify that the foregoing is a true copy from the original on file in my office.

ELIJAH SELLS.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 153.

MEMORIAL AND RESOLUTION

OF

THE LEGISLATURE OF IOWA,

ASKING

That the State may be indemnified for expenses incurred in consequence of the hostile invasion of the Sioux Indians in March, 1857.

FEBRUARY 9, 1858.—Referred to the Committee on Claims, and ordered to be printed.

MEMORIAL AND JOINT RESOLUTION asking Congress to appropriate a sum sufficient to the State of Iowa to indemnify the said State for all necessary expenses incurred in an expedition raised under authority of the governor of the State of Iowa to relieve the settlements at Spirit lake in March, A. D. 1857.

Your memorialists, the general assembly of the State of Iowa, would respectfully represent that in consequence of the hostile invasion of the State by a band of Sioux Indians in the month of March, A. D. 1857, whereby a large number of the citizens of this State were brutally murdered, and a considerable amount of property destroyed; and whereas, in order to protect the lives and property of the citizens of this State, it became necessary to raise, arm, and equip a company of men to march to the relief of the settlements; and whereas, under the authority of the governor of this State, a company of nearly one hundred men were so raised, armed, and equipped, and did march to the scene of the massacre, thereby relieving a number of families from starvation and burying the bodies of the murdered:

Your memorialists would therefore respectfully ask of your honorable bodies that a law may be passed providing for the payment to the State of Iowa all the expenses incurred by the said State in consequence of said hostile invasion as aforesaid.

Resolved, That the senators from this State be instructed, and the representatives be requested, to use their best exertions to procure the passage of a law appropriating a sum as asked for in the foregoing memorial, and that the secretary of state forward a copy thereof to each.

STEPHEN B. STELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved January 30, 1858.

RALPH P. LOWE.

I hereby certify that the foregoing is a true copy from the original roll, on file in my office.

ELIJAH SELLS,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 154.

RESOLUTION

OF

THE LEGISLATURE OF MICHIGAN,

IN FAVOR OF

An appropriation for the improvement of certain harbors.

FEBRUARY 11, 1858.—Referred to the Committee on Commerce, and ordered to be printed.

JOINT RESOLUTION of instruction to our senators and representatives in Congress, urging the passage of an act of Congress making appropriations for the improvement of certain harbors.

Whereas, by the ordinance of 1787, the inland waters of the States and Territories of the United States are declared common highways, forever free to the citizens of said States and Territories, and therefore necessarily beyond the care and control of local legislation, but especially within the province of the general government:

And whereas the immense commercial interest involved in the successful navigation of said waters, as well as the great floating capital invested in commerce, wherein citizens of the Union at large are more or less concerned, and the security, wealth, and prosperity of the Union are eminently conserved:

And whereas the protection of such varied and general interests is necessarily dependent upon safe and accessible harbors, into which shipping may repair for safety from the frequent storms which vex and imperil its security:

The removal of obstructions to navigation and the improvement of harbors for the free ingress and egress of such shipping interest are absolutely essential to the maintenance of commerce, and the necessary legislation and protection thereof, inevitably national in their character, as repeatedly recognized by appropriations from the federal government: Therefore—

Be it resolved by the senate and house of representatives of the State of Mcihigan, That our senators in Congress be instructed, and our representatives requested, to use every honorable exertion to procure the passage of an act of Congress making suitable appropriations for the improvement of the following harbors, to wit: New Buffalo, St. Joseph, Kalamazoo, Black lake, Grand river, Muskegon, White river, Pere Marquette, Manistee, Saginaw bay, Monroe, Thunder bay, Marquette, Ontonagon, Mackinac, and Sheboygan.

Resolved, That the governor be requested to forward copies of the foregoing preamble and resolution to our senators and representatives in Congress.

GEORGE A. COE,
President of the Senate.
BYRON G. STOUT,
Speaker of the House of Representatives.

Approved February 3, 1858.

KINSLEY S. BINGHAM.

STATE OF MICHIGAN, } ss.
County of Ingham,

OFFICE OF SECRETARY OF STATE.

I, John McKinney, secretary of state, do hereby certify that I have compared the foregoing copy of a joint resolution passed by the legislature of the State of Michigan with the original resolution now on file in this office, and that it is a true copy thereof.

In witness whereof, I have hereunto set my hand and affixed the great seal of the State of Michigan, at Lansing, this 4th day of February, A. D. 1858. [L. S.]

JOHN McKINNEY,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 155.

RESOLUTION

OF

THE LEGISLATURE OF MICHIGAN,

IN FAVOR OF

An appropriation for the repair of the St. Mary's Falls Ship Canal.

FEBRUARY 11, 1858.—Referred to the Committee on Commerce and ordered to be printed.

JOINT RESOLUTION relative to the protection and permanent security of the St. Mary's Falls Ship Canal.

Whereas it appears by the report of the superintendent of the St. Mary's Falls Ship Canal that, during the past season, owing to the unavoidable action of frost upon the embankments, leaks have occurred in various portions of the same, and in two instances breaks of a serious and alarming character;

And whereas it appears that some further expense is necessary in securing the said embankment, and in the erection of an additional set of gates to facilitate the navigation of said canal; therefore—

Resolved, That our senators in Congress be instructed, and our representatives in that body be requested, to use all proper means to secure by Congress such appropriation as may be necessary to render the above work permanent and secure.

Resolved, That the governor be requested to transmit copies of the foregoing preamble and resolution, together with copies of the report of the late superintendent of the canal, to each of our senators and representatives in Congress.

GEORGE A. COE,
President of the Senate.
BYRON G. STOUT,
Speaker of the House of Representatives.

Approved January 30, 1858.

KINSLEY S. BINGHAM.

STATE OF MICHIGAN,
Office of the Secretary of State, } *ss.*

I, John McKinney, secretary of state, do hereby certify that I have compared the foregoing copy of a joint resolution passed by the legislature of the State of Michigan with the original, now on file in this office, and that it is a true copy thereof.

In witness whereof, I have hereunto set my hand and affixed the great seal of the said State, at Lansing, this 5th day of February, A. D. 1858. [L. S.]

JOHN McKINNEY,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 156.

RESOLUTION

OF

THE LEGISLATURE OF MICHIGAN,

RELATIVE

To a Northern Pacific Railroad.

FEBRUARY 15, 1858.—Ordered to lie on the table and be printed.

JOINT RESOLUTION relative to a Northern Pacific Railroad.

Whereas an immense commerce has, within a few years, grown up on our Pacific coast, which is continually increasing in importance, and the benefits of which commerce is increasing and accruing to other countries in consequence of the difficulties, delays, and dangers attending travel and transportation to and from our eastern and western ocean ports by the long, dangerous and fatiguing route of the oceans, gulfs, and isthmus;

And whereas a vast domain lying between our western States and the Pacific remains, and must ever remain, waste and undeveloped, without some safe, easy and commodious means of conveyance through our western territories;

And whereas such means of conveyance would not only facilitate the settlement and cultivation of a region that can never be improved without it, but would open the heart of a continent to the poor but enterprising workingmen of the older States, substitute for worthless wilds cultivated fields, the great source of all wealth, and open to us a commerce of the greatest magnitude;

And whereas the cost of providing such means of conveyance would be more than returned by the increased value of our now waste and unproductive lands, and is scarcely worthy a moments consideration in view of the immediate and lasting benefits which would necessarily accrue upon furnishing such means of intercommunication from ocean to ocean through our entire domain, which must ultimately revolutionize the commerce of the world and centralize the trade of Europe and Asia, from opposite directions, with the productions of every clime in the new repulic of America; therefore—

Resolved, That our senators and representatives in Congress be requested to urge the passage of a law granting public lands to aid in the construction of a railroad from the Mississippi river to the Pacific ocean, upon or near the line known as the Stevens or Northern Pacific railroad route.

And also for the passage of a law granting public lands in the State of Michigan to aid in the construction of a railroad to aid in forming a connexion between said Northern Pacific Railroad and the eastern States, on the line of the Grand Trunk and Great Western railways, to commence at Port Huron, in the State of Michigan, and terminate at some point on the Montreal river on the western boundary of the upper peninsula of the State of Michigan.

Resolved, That the governor of this State be requested to transmit, as soon as the same can be done, to each of the senators and representatives in Congress from this State a copy of the foregoing preamble and resolution.

GEO. A. COE,
President of the Senate.

BYRON G. STOUT,
Speaker of the House of Representatives.

Approved January 30, 1858.

KINSLEY S. BINGHAM.

STATE OF MICHIGAN, }
Office of the Secretary of State, } *ss.*

I, John McKinney, secretary of state, do hereby certify that I have compared the foregoing copy of a joint resolution passed by the legislature of the State of Michigan with the original now on file in this office, and that it is a true copy thereof.

In witness whereof, I have hereunto set my hand and affixed the great seal of the said State, at Lansing, this 5th day of February, A. D. 1858. [L. S.]

JOHN McKINNEY,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 157.

RESOLUTIONS

OF

THE LEGISLATURE OF MICHIGAN,

IN

Favor of a donation of land for the endowment of the Michigan Agricultural College.

FEBRUARY 15, 1858.—Referred to the Committee on Public Lands, and ordered to be printed.

JOINT RESOLUTION relative to an appropriation of a grant of land for the endowment of the Michigan Agricultural College.

Whereas a memorial has been presented to Congress by the board of education and the president and faculty of the Michigan Agricultural College, praying for a grant of land as an endowment of said Michigan Agricultural College; and

Whereas we believe that the practical working of the Michigan Agricultural College fully vindicates the feasibility and correctness of the principles upon which it is founded. Therefore—

Resolved, That our senators in Congress be instructed and our representatives requested to use all honorable means to secure the passage of a law in accordance with the memorial.

Resolved, That the governor be requested to forward copies of the foregoing preamble and resolution to each of our senators and representatives in Congress.

GEORGE A. COE,
President of the Senate.

BYRON G. STOUT,
Speaker of the House of Representatives.

Approved January 29, 1858.

KINSLEY S. BINGHAM.

STATE OF MICHIGAN, *Office of Secretary of State*, } *ss.*

I, John McKinney, Secretary of State, do hereby certify that I have compared the foregoing copy of a joint resolution passed by the legis

lature of the State of Michigan with the original, now on file in this office, and that it is a true copy thereof.

In witness whereof, I have hereunto set my hand and affixed the great seal of the said State at Lansing, this 4th day of February, A. D. 1858.

[L. S.]

JOHN McKINNEY,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 158.

MEMORIAL

OF THE

LEGISLATURE OF WISCONSIN,

IN FAVOR OF

The establishment of a mail route from Dunleith, Illinois, to Prarie du Chien, Wisconsin.

FEBRUARY 15, 1858.—Referred to the Committee on Post Offices and Post Roads, and ordered to be printed.

A MEMORIAL TO CONGRESS for the establishment of a mail route.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The memorial of the legislature of the State of Wisconsin respectfully represents, that the interests, convenience and business wants of a large number of inhabitants in the counties of Crawford and Grant, in this State, require the establishment of a tri-weekly mail route from Dunleith, in the State of Illinois, on the Mississippi river, by the way of Potosi, Cassville and Patch Grove, in said Grant county, to Prarie du Chien, in said county of Crawford. Your memorialists would, therefore, respectfully ask your honorable bodies to establish by law the proposed mail route, and that tri-weekly service thereon may be established as soon as practicable; and your memorialists, as in duty bound, will ever pray, &c.

F. S. LOVELL,
Speaker of the Assembly.

E. D. CAMPBELL,
President of the Senate.

Appproved February 9, 1858.

ALEX. H. RUNDALL.

STATE OF WISCONSIN, *Secretary's Office,* } *ss.*

The secretary of state of the State of Wisconsin, does hereby certify that the foregoing memorial has been compared with the original

enrolled memorial in this office, and that the same is a true and correct copy thereof, and of the whole of such original.

In witness whereof, I have hereunto set my hand and affixed the great seal of the State, at the capitol, in Madison, this ninth day of February, A. D. 1858.

[L. S.]

D. W. JONES,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 159.

JOINT RESOLUTIONS

OF THE

LEGISLATURE OF TEXAS,

Instructing their senators and requesting their representatives to have all the charges against John C. Watrous, judge of the United States district court, investigated by Congress during the present session.

FEBRUARY 15, 1858.—Read and ordered to be printed.

A JOINT RESOLUTION.

SECTION 1. *Be it resolved by the legislature of the State of Texas,* That whereas divers charges have been made against John C. Watrouse, district judge of the United States for the eastern district of Texas, before the House of Representatives of the United States, with a view to his impeachment, and a committee of said House has reported the following resolution:

Resolved, That John C. Watrous, United States district judge for the district of Texas, be impeached of high crimes and misdemeanors.

And it is required, for the honor of the State of Texas, and is due to the accused, that all of said charges be promptly and fully investigated, and finally acted upon. That, without intending to express any opinion as to the guilt or innocence of Judge J. C. Watrous, the representatives in Congress from this State are hereby requested to take such steps as may be necessary to cause a full investigation to be made by the House of Representatives of the United States during the present session of all the charges that have been made against said John C. Watrous, and to use their best exertions to cause definite action to be taken thereon.

SECTION 2. *Be it further resolved,* That the governor is hereby requested to forward to each of the senators and representatives in Congress from this State, and also to said John C. Watrous, a crtified copy of this joint resolution.

Approved January 19, 1858.

DEPARTMENT OF STATE,
Austin, Texas, January 23, 1858.

I, the undersigned, secretary of State of the State of Texas, do hereby certify that the above and foregoing is a correct copy of the original on file in this department.

Given under my hand and the seal of the Department of State the [L. S] day and year first above written.

T. S. ANDERSON,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 160.

RESOLUTION

OF

THE LEGISLATURE OF MICHIGAN,

Relative to the extension of slavery.

FEBRUARY 17, 1858.—Ordered to lie on the table and be printed.

JOINT RESOLUTION relative to the extension of slavery.

Whereas the people of the State of Michigan have shown an unyielding hostility to the further extension of slavery by a large majority at every election since (1854,) eighteen hundred and fifty-four, when their will could be expressed in reference to that subject;

And whereas the legislature of the State of Michigan have, on two several occasions, instructed their senators and requested their representatives to act in accordance with the above expressed sentiment in Congress, which instructions have been, by some of those thus instructed, wholly disregarded; therefore—

Resolved by the senate and house of representatives of the State of Michigan, That our senators be instructed and our representatives requested to use all proper means to prevent the further extension of slavery in the Territories of the United States, or the admission of any more slave States into the Union; to oppose the admission of Kansas into the Union under the Lecompton constitution, or any constitution maintaining slavery therein.

Resolved, That the governor be requested to forward copies of the foregoing preamble and resolution to our senators and representatives in Congress.

GEORGE A. COE,
President of the Senate.
BYRON G. STOUT,
Speaker of the House of Representatives.

Approved February 3, 1858.

KINSLEY S. BINGHAM,

STATE OF MICHIGAN, }
Office of Secretary of State, } *ss.*

I, John McKinney, Secretary of State, do hereby certify that I have compared the foregoing copy of a joint resolution passed by the legislature of the State of Michigan with the original, now on file in this office, and that it is a true copy thereof.

In witness whereof I have hereunto set my hand and affixed the great seal of the said State at Lansing, this 4th day of February, A. D. 1858.

[L. S.]

JOHN McKINNEY,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 161.

IN THE SENATE OF THE UNITED STATES.

[To accompany Bill S. 77.]

Mr. ALLEN submitted the following

LETTER

FROM

THE SECRETARY OF THE TREASURY.

FEBRUARY 18, 1858.—Ordered to be printed.

TREASURY DEPARTMENT,
January 29, 1857.

SIR: I have the honor to acknowledge the receipt of your letter of the 28th instant, enclosing a "bill to amend an act entitled 'An act to limit the liability of ship owners, and for other purposes,'" approved March 3, 1851, and, in reply to your request for the views of the department on the subject, to state that the department can perceive no reason why the provisions of the act referred to should not be applied to the owner or owners of steamboats, sail vessels, and propellers used in the navigation of the great northern lakes, as well as to the owners of such vessels employed on the ocean.

The bill received with your letter is herewith returned.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

Hon. C. C. CLAY, Jr.,
Chairman Committee on Commerce,
United States Senate.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 162.

RESOLUTIONS

OF

THE LEGISLATURE OF KENTUCKY,

RESPECTING

Pensions to soldiers of the revolution and of the war of 1812.

FEBRUARY 18, 1858.—Referred to the Committee on Pensions, and ordered to be printed.

PREAMBLE AND RESOLUTIONS in relation to the soldiers of the revolution and war of 1812.

Whereas more than forty years have elapsed since General Jackson fought and won the last great battle of the late war with Great Britain, at New Orleans, on the eighth day of January, 1815, and few of those who participated in that eventful struggle are left to tell the tale of their sufferings and services; by far the greater number, with mutilated limbs and broken constitutions, have gone down to the grave, many of them in penury and want; now and then we see an old survivor, too proud to beg, with shattered frame and mean attire, walking through our streets, or retired to some humble cabin in the mountains, sustained by his descendants. The war of the revolution achieved our liberty; the war of 1812 secured for us and our posterity our free institutions forever. In less than forty years after our revolutionary struggle a grateful Congress of the United States passed a general pension law for the benefit of the surviving officers and soldiers of that immortal conflict, at a time when the public treasury was empty, the nation poor in all its resources, and heavy war debts hanging over us. Now the nation is rich, its resources almost infinite, and no debt pressing upon us for payment, is it unreasonable to ask that similar justice be done to the grayheaded survivors of the war of 1812, and to the widows and children of those who are dead?

Be it therefore resolved, That, in our judgment, the present Congress of the United States ought to extend to the surviving soldiers of the war of 1812, and to the widows and orphans of those who are dead, the same pension system adopted for those of the revolution.

Resolved, That every principle of justice requires that the pensions

of those who were wounded, or otherwise disabled during the late war, should commence at the date of the disability.

Resolved, That the pension laws in regard to the widows of revolutionary officers and soldiers, *as construed* and executed for the last twenty-five years, ought still to be administered with a fair and liberal spirit, and not according to technical precedents in civil or criminal cases.

Resolved, That, in our opinion, the pensions granted to the widows of officers and soldiers, dying or being killed in the services of the United States, ought to be extended ——— years.

Resolved, That a copy of these proceedings be forwarded to the President and Vice President of the United States, and to each of our senators and representatives in Congress, with a respectful request of their early and favorable consideration.

DANIEL P. WHITE,
Speaker of the House of Representatives.
JOHN Q. A. KING,
Speaker of the Senate.

Approved February 6, 1858.

C. S. MOREHEAD

By the Governor:
MASON BROWN, *Secretary of State.*

EXECUTIVE DEPARTMENT,
Frankfort, Kentucky, February 13, 1858.

SIR: I herewith transmit to you a copy of the preamble and resolutions of the general assembly of Kentucky, in relation to the soldiers of the revolution and war of 1812.

I have the honor to be, your obedient servant,

C. S. MOREHEAD.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 163.

MEMORIAL AND JOINT RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF IOWA,

IN FAVOR OF

Additional Mail Facilities in that State.

FEBRUARY 23, 1858.—Referred to the Committee on Post Offices and Post Roads and ordered to be printed.

MEMORIAL AND JOINT RESOLUTION to Congress for additional mail facilities.

To the Senate and House of Representatives of the United States:

Your petitioners, the general assembly of the State of Iowa, respectfully represent to your honorable body: That, at present, great inconvenience is suffered by the citizens of the southwestern counties of Iowa for lack of mail facilities for direct communication with Des Moines, the capital of the State; and still greater inconveniences are suffered by the citizens of Iowa generally for want of a direct line of communication with western Missouri and the Territory of Kansas, the mails and travellers for which sections of country having at present to pass over one of two circuitous routes, to wit: the one by Council Bluffs, and thence south, through Nebraska or Western Iowa, or down to St. Louis, and thence up the Missouri river. Thus mails are subjected to great and serious delays, and the travelling public to much unnecessary expense.

Your petitioners therefore respectfully ask that a mail route be established from the city of Des Moines, Iowa, by way of Winterset, in Madison county, Afton, in Union county, Bedford, Taylor county, Iowa, and Mound City, in Holt county, Missouri, to White Cloud, in the Territory of Kansas, and that the mails be transmitted over said route tri-weekly, in two or four-horse coaches, and your petitioners will ever pray, &c.

Resolved, That our senators in Congress be instructed, and our representatives be requested, to urge by their votes and influence the establishment of the mail route and mail facilities prayed for in the foregoing memorial.

Resolved, That a copy of this memorial and resolution be forwarded to each of our senators and representatives in Congress by the secretary of state.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved February 11, 1858.

RALPH P. LOWE.

I hereby certify that the foregoing is a true copy from the original on file in my office.

ELIJAH SELLS,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 164.

JOINT MEMORIAL

OF THE

LEGISLATURE OF THE STATE OF IOWA,

PRAYING

A grant of land for McGregor, St. Peter's, and Missouri River Railroad.

FEBRUARY 23, 1858.—Referred to the Committee on Public Lands and ordered to be printed.

JOINT MEMORIAL to Congress for a grant of land in aid of the construction of the McGregor, St. Peter's, and Missouri River Railroad.

To the Senate and House of Representatives of the United States:

Your memorialists, the general assembly of the State of Iowa, respectfully call the attention of your honorable body to the memorials of the general assembly of this State, passed at its different sessions heretofore, asking a grant of land to aid in the construction of the McGregor, St. Peter's and Missouri River Railroad. Your memorialists respectfully represent that energetic efforts are being made by the above named company for the construction of a road, commencing at McGregor, in said State, at a point opposite the terminus of the Milwaukie and Mississippi Railroad, (which is now completed across the State of Wisconsin,) and running thence west to the Missouri river; that the route is eminently adapted to the advantageous construction of a work of this character; that it is one of the great natural lines of projected railroads commencing between the east and west; that under the donation of lands made by Congress to said State the northern portion received no benefit therefrom; and your memorialists, believing that the construction of said road would greatly facilitate the settlement and add largely to the wealth of the northern portion of said State, ask that a donation of land lying within the State may be made to aid in its construction.

Resolved, That our senators in Congress be instructed, and our representatives be requested, to use their influence to procure from the general government a donation of every alternate section, equal to three miles in width on each side of said road, to be given to said com-

pany, on such terms as in the opinion of the legislature of this State may be just and reasonable.

Resolved, That the secretary of state transmit a copy of this memorial and joint resolution to each of our members of Congress.

STEPHEN B. SHELLEDY,
Speaker of the House of Representati ve.
ORAN FAVILLE,
President of the Senate.

Approved February 12, 1858.

RALPH P. LOWE.

I hereby certify that the foregoing is a true copy from the original roll on file in my office.

ELIJAH SELLS,
Secretary of State

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 165.

RESOLUTIONS

OF THE

LEGISLATURE OF THE STATE OF TENNESSEE,

INSTRUCTING

The senators and requesting the representatives of that State in Congress to vote for the admission of Kansas as an independent State, under what is termed the Lecompton constitution.

FEBRUARY 23, 1858.—Read and ordered to be printed.

JOINT RESOLUTIONS.

Whereas the act of 1820, commonly called the Missouri Compromise Act, was inconsistent with the principles declared and laid down in the acts of 1850, better known as the Compromise acts of that year; and whereas the Missouri Compromise Act was a palpable wrong done to the people of the slaveholding States, and should have been repealed; and whereas the principles of the Kansas-Nebraska bill meet our unqualified approbation, and should have received the cordial support of our senators and representatives in Congress;

Whereas one of those senators, Hon. John Bell, in a speech delivered against the Kansas-Nebraska bill, May 25, 1854, said: "A noble, generous, and high-minded senator from the south, within the last few days before the final vote was taken on the bill, appealed to me in a manner which I cannot narrate, and which affected me most deeply. The recollection of it affects and influences my feelings now, and ever will. I told the honorable senator that there was one feature in the bill which made it impossible that I should vote for it, if I waived all other objections. I said to others who had made appeals to me on the subject, that while it would afford me great pleasure to be sustained by my constituents, yet, if I was not, I would resign my seat here the moment I found my course upon this subject was not acceptable to them. As for my standing as a public man, and whatever prospect a public man of long service in the councils of the country might be supposed to have, I would resign them all with pleasure. I told that gentleman that if upon this, or any other great question affecting the interest of the south, I should find my views conflicting materially with what should appear to be the settled sentiment of that section, I should feel it my imperative duty to retire.

"I declare here to-day that if my countrymen of Tennessee shall declare against my course on this subject, and that shall be ascertained to a reasonable certainty, I will not be seen in the Senate a day afterwards:" Therefore—

Be it resolved by the general assembly of the State of Tennessee, That we fully concur with the Hon. John Bell as to the duty of a senator, when the voice of his constituency has decided against him on a question materially affecting their interest.

Be it further resolved, That in our opinion, the voice of Mr. Bell's countrymen of Tennessee, in the recent elections, has declared against his course on the Kansas-Nebraska bill, a question of vital importance to the south.

Be it further resolved, That our senators in the Congress of the United States are hereby instructed, and our representatives are requested, to vote for the admission of Kansas as an independent State, under what is termed the Lecompton constitution, transmitted to the Senate and House of Representatives in Congress assembled, by President Buchanan, in his message to them, dated the 2d of February, 1858.

Be it further resolved, That the governor of this State forward a certified copy of these resolutions to our senators and representatives in the Congress of the United States.

DANIEL S. DONELSON,
Speaker of the House of Representatives.
JOHN C. BURCH,
Speaker of the Senate.

Adopted February 10, 1858.

I, F. N. W. Burton, secretary of the State of Tennessee, do hereby certify that the foregoing is a true copy of the original resolutions in my office.

In witness whereof, I have hereunto set my hand and affixed the great seal of the State, this 12th day of February, A. D. 1858.

[L. S.]

F. N. W. BURTON,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 166.

RESOLUTION

OF

THE LEGISLATURE OF THE STATE OF IOWA,

ASKING

Congress for a grant of land to aid in the construction of the Prairie du Chien and Mankota railroad.

FEBRUARY 24, 1858.—Referred to the Committee on Public Lands and ordered to be printed.

JOINT RESOLUTION asking Congress for a grant of land to aid in the construction of the Prairie du Chien and Mankota railroad.

Resolved by the general assembly of the State of Iowa, That our senators in Congress be instructed, and our representatives requested, to use their best exertions to procure the passage of a bill making a grant of land to aid in the construction of a railroad from the terminus of the Milwaukie and Mississippi railroad; thence in a westerly direction, *via* Paint Creek Valley, Waukon, in the county of Allamakee, and Decorah, in the county of Winneshiek, in the State of Iowa, to Mankota, in the Territory of Minnesota.

Resolved, That the secretary of state be instructed to forward a copy of the foregoing resolution to each of our senators and representatives in Congress.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved February 16, 1858.

RALPH P. LOWE.

I, Elijah Sells, secretary of state, hereby certify that the foregoing is a true copy from the original roll on file in my office.

ELIJAH SELLS,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 167.

MEMORIAL AND JOINT RESOLUTION

OF

THE LEGISLATURE OF THE STATE OF IOWA,

IN BEHALF OF

James B. Thomas and family, sufferers by Indian depredations.

FEBRUARY 24, 1858.—Referred to the Committee on Indian Affairs and ordered to be printed.

MEMORIAL AND JOINT RESOLUTION of the general assembly of the State of Iowa to Congress for the relief of James B. Thomas and family.

Whereas James B. Thomas, a natural born citizen of the United States, does most respectfully represent, that, in consequence of the acts of a company of some forty Indians of the Sioux tribe, in the month of March, 1857, he has been deprived of all his property, as set forth in the accompanying petition, and that one of his sons was instantly killed, and himself wounded in the arm by the Indians—the wound of such a nature as to render the amputation of the limb necessary in order to preserve his life; and that he also lost another child from the effects of the intense cold experienced while fleeing from the Indians for safety, and that he is now entirely destitute, and in a great measure unable to support his family.

Your memorialists would most respectfully ask your honorable body to grant a sufficient remuneration to said James B. Thomas and family for the loss sustained in consequence of the barbarous acts of said Indians.

Resolved by the general assembly of the State of Iowa, That our senators and representatives in Congress be instructed and requested to use all their influence to procure the passage of an act for the relief of said James B. Thomas and family; and that, in view of the facts set forth in the memorial, we deem it but an act of common justice on the part of the general government to remunerate said Thomas and family for the property and loss sustained in consequence of Indian depredations.

Resolved, That the secrerary of state forward a copy of the foregoing resolution to each of our senators and representatives in Congress.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved February 16, 1858.

RALPH P. LOWE.

I hereby certify that the foregoing is a true copy from the origina roll on file in my office.

ELIJAH SELLS, *Secretary of State.*

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 168.

MEMORIAL

OF THE

LEGISLATURE OF WISCONSIN,

IN FAVOR OF

A donation of land to the Territory of Nebraska, to aid in the construction of railroads.

FEBRUARY 24, 1858.—Referred to the Committee on Public Lands and ordered to be printed.

A MEMORIAL to Congress concerning the Pacific railroad and Nebraska land grant.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The memorial of the legislature of the State of Wisconsin respectfully represents: That, as we are informed, there is before Congress a bill for a grant of lands to the Territory of Nebraska for railroad purposes. The object of the measure being, as we presume, to extend through that Territory westward the several lines of railroad from the Atlantic seaboard with a view of ultimately reaching the Pacific coast. Railroads have, for several years, been completed to the Mississippi river, and most of them have means, in grants of lands and other resources adequate, or nearly so, to the extension of those roads to the Missouri river, and all of which are being pushed rapidly across the States of Missouri, Iowa, and Minnesota. Whilst we would not assume to prescribe the exact mode by which government aid ought to be extended to help forward the great and pre-eminently national enterprise of uniting the Atlantic States and Territories with those of the Pacific by means of railroads, it will not, perhaps, be deemed irrelevant to inquire how the system, which the government has heretofore adopted of extending aid through the States and Territories, has operated upon the progress of those great enterprises. We think that the history of the railroad system in the western States and Territories will sustain us in the assertion, that that particular mode of extending aid has in the main been pre-eminently successful. A system of railroads has, within the last six or seven years, been built up, connecting almost every part of the great west with the Atlantic coast, that never could have been consummated in the absence of the lands

granted by Congress for that purpose. Those grants have stimulated private and local capital and enterprise to embark in this work. Branch roads have been pushed out from the main trunks in every direction, and connexions made with extensive and fertile regions of country, which otherwise would have remained, for years to come, shut out from the commerce and enterprise of the country. The extremes of the east and west, the north and the south, have been brought into immediate neighborhood by this all-powerful agent, the railroad system of the west, stimulated, and strengthened, and consolidated, by the magnificent and judicious policy of the general government. A journey from Boston, New York, Philadelphia, and other Atlantic cities, to the Mississippi river, which, a few years since, would require weeks and even months, can now be performed in a few hours, and that too at one tenth of the expense. The settlement of the entire west, and the development of its immense agricultural and mineral resources has been unparalleled in the history of this or any other country. Such having been heretofore the results of that system of policy of the general government, we may safely assume that the same consequences will follow from the extension of that same policy of land grants to the other States and Territories. And especially will those results follow in the case of Nebraska. There are peculiar reasons why this grant should be made to that Territory. She is situated upon the utmost verge of civilization, east of the mountains. Her internal rivers are not susceptible of navigation. A large share of her most fertile and desirable lands cannot be reached except by railroads. The safety and prosperity of her inhabitants require and demand that extensive and powerful settlements be built up all along her western frontier as barriers to the incursions of the warlike and savage hordes of Indians who dwell in the fastnesses of the mountains beyond. This can never be consummated, except through the agency of railroads. But there is one other reason which ought, as we think, have great weight in favor of making the proposed grant. A policy has for years been adopted of making grants of lands to the western States and Territories for railroad purposes. If a different policy is now adopted ; if like grants are to be withheld from the more remote States and Territories, it will, to all intents and purposes, be encouraging a policy in favor of the strong and against the weak ; of making donations of lands to the strong, the rich, and powerful, and withholding them from those who, in their infancy and weakness, are struggling single handed and alone with the trials, privations, and hardships of a frontier life. Nebraska is the only western State or Territory east of the mountains, with the exception of Kansas, where any considerable amount of public lands are situated, which has not received lands to aid in the construction of railroads. There are also national considerations involved in this measure entirely independent of the particular and local benefit to Nebraska. There are vast and fertile regions of country lying beyond what will probably be the ultimate limits of Nebraska, which can only be reached by means of railroads through that Territory. Military posts must also be maintained along the western frontier, which can only be supplied by roads of some description through that Territory. A southern or

a northern route cannot supply those posts. By no other route can so direct and immediate communication by means of railroads be effected with a large portion of Oregon and Washington Territories as through the central portions of Nebraska.

Resolved, That our senators and representatives in Congress be requested to give their support to the measures contemplated in the above memorial.

Resolved, That the secretary of state be directed to transmit to the President of the Senate and Speaker of the House of Representatives of the United States a copy of this memorial and resolutions, duly authenticated, with a request that they be laid before their respective bodies.

35TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 169.

RESOLUTION

OF

THE LEGISLATURE OF THE STATE OF IOWA,

FOR

Land grants to aid in the construction of the Lansing, Northern Iowa, and Southern Minnesota railroad.

FEBRUARY 24, 1858.—Referred to the Committee on Public Lands and ordered to be printed.

JOINT RESOLUTION asking Congress for a grant of land to aid in the construction of the Lansing, Northern Iowa, and Southern Minnesota railroad.

Resolved by the general assembly of the State of Iowa, That our senators in Congress be instructed, and our representatives be requested, to use their best exertions to procure the passage of a bill making a grant of land to aid in the construction of a railroad from Lansing, Alamakee county, Iowa, *via* Decorah, Winneshiek county; thence through the county of Howard, Iowa, in a northwest direction, to the great bend of the St. Peter's river, in the Territory of Minnesota.

Resolved, That the secretary of state be instructed to forward a copy of the foregoing resolution to each of our senators and representatives in Congress.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved February 16, 1858.

RALPH P. LOWE.

I hereby certify that the foregoing is a true copy from the original roll on file in my office.

ELIJAH SELLS,
Secretary of State.

RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF CALIFORNIA,

IN FAVOR OF

The establishment of a mail route from Marysville to Forest City.

[MARCH 1, 1858.—Referred to the Committee on Post Offices and Post Roads.

CONCURRENT RESOLUTION relative to a mail route from Marysville to Forest City via North San Juan.

Resolved by the assembly, the senate concurring, That our senators in Congress be, and are hereby instructed, and our representatives requested to secure the early establishment of a daily mail route from Marysville, in Yuba county, to Forest City, in Sierra county, via North San Juan, in Nevada county.

NIN. E. WHITESIDE,
Speaker of the Assembly.
JOS. WALKUP,
President of the Senate.

OFFICE OF SECRETARY OF STATE,
Sacramento, California, January 27, 1858.

I, Ferris Forman, secretary of state of the State of California, do hereby certify that the annexed is a true and correct copy of the original concurrent resolution now on file in my office.

Witness my hand and the great seal of State, at office in Sacramento, [L. S.] California, the 27th day of January, A. D. 1858.

FERRIS FORMAN,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 171.

RESOLUTIONS

OF THE

LEGISLATURE OF THE STATE OF CALIFORNIA,

IN FAVOR OF

The establishment of mail routes from the town of Union to Orleans Bar, and from the town of Union to San Francisco.

MARCH 1, 1858.—Referred to the Committee on Post Office and Post Roads.

CONCURRENT RESOLUTION relative to the establishment of a certain mail route in the northern part of this State.

Resolved by the assembly, the senate concurring, That our senators in Congress be, and they are hereby, instructed, and our representatives requested, to use their influence to procure the passage of a law establishing a mail route, and a weekly service thereon, from the town of Union, in Humbolt county, *via* Haopa valley, to Orleans bar, in Klamath county; also, for a law establishing a mail route, and a weekly service thereon, from the town of Union, *via* Eureka, Bucksport, Table Bluff, Eel river, Pacific's township, Bear river, and Mattol valley, in Humbolt county, and Mendosino Mills, Albion, Ukiah, Russian river, Santa Rosa, and Petaluma, by land, and from thence to San Francisco by water; and to procure a sufficient appropriation to render said mail service effective.

Resolved, That his excellency the governor be requested to forward a copy of the above resolution to each of our senators and representatives in Congress, and to the Postmaster General of the United States, at as early a day as practicable.

NIN. E. WHITESIDE,
Speaker of the Assembly.
JOS. WALKUP,
President of the Senate.

OFFICE OF SECRETARY OF STATE,
Sacramento, California, January 27, 1858.

I, Ferris Forman, secretary of state of the State of California, do hereby certify that the annexed is a true and correct copy of the original concurrent resolution now on file in my office.

Witness my hand and the great seal of State, at office in Sacramento, [L. S.] California, the 27th day of January, A. D. 1858.

FERRIS FORMAN,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 172.

RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF CALIFORNIA,

IN FAVOR OF

The establishment of a mail route from San Bernardino to Fort Yuma.

MARCH 1, 1858.—Referred to the Committee on Post Offices and Post Roads.

CONCURRENT RESOLUTION relative to a mail route from San Bernardino to Fort Yuma.

Resolved by the assembly, the senate concurring, That our senators in Congress be instructed, and our representatives requested, to use their influence to secure the establishment of a weekly mail route from the city of San Bernardino, via San Gorgonia Pass and Couhuilla Valley, to Fort Yuma, a distance of one hundred and forty miles, to connect with the weekly route already established from Los Angelos to the said city of San Bernardino.

NIN. E. WHITESIDE,
Speaker of the Assembly.
JOS. WALKUP,
President of the Senate.

OFFICE OF SECRETARY OF STATE,
Sacramento, California, January 27, 1858.

I, Ferris Forman, secretary of state of the State of California, do hereby certify that the annexed is a true and correct copy of the original concurrent resolution now on file in my office.

Witness my hand and the great seal of State, at office in Sacramento, California, the twenty-seventh day of January, A. D. 1858. [L. S.]

FERRIS FORMAN,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 173.

RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF CALIFORNIA,

IN FAVOR OF

The establishment of mail-routes from Auburn to Nevada city, from Sacramento city to Cacheville, and from Sacramento city to Stockton.

MARCH 1, 1858.—Referred to the Committee on Post Offices and Post Roads.

CONCURRENT RESOLUTION relative to certain mail-routes in California.

Resolved by the assembly, the senate concurring, That our senators in Congress be instructed, and our representatives requested, to use their best exertions to procure the early establishment of a mail-route and daily mail from Auburn, Placer county, to Nevada city, Nevada county, *via* English's Bridge and Grass Valley. Also, a tri-weekly mail from Sacramento city, *via* Yolo city, Yolo county, to Cacheville, in Yolo county; and tri-weekly from Sacramento to Stockton, by the telegraph road.

Resolved, That his excellency the governor be requested to forward a copy of the above resolution to our senators and representatives in Congress at as early a day as practicable.

NIN. E. WHITESIDE,
Speaker of the Assembly.
JOS. WALKUP,
President of the Senate.

OFFICE OF SECRETARY OF STATE,
Sacramento, California, Januarg 28, 1858.

I, Ferris Forman, secretary of state of the State of California, do hereby certify that the annexed is a true and correct copy of the original concurrent resolution now on file in my office.

Witness my hand and the great seal of State, at office, in Sacra-
[L. S.] mento, California, the 28th day of January, A. D. 1858.

FERRIS FORMAN,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 174.

RESOLUTIONS

OF THE

LEGISLATURE OF THE TERRITORY OF WASHINGTON,

RELATIVE TO

The proclamation of martial law by Isaac I. Stevens, late governor of that Territory.

MARCH 1, 1858.—Read, and ordered to be printed.

RESOLUTIONS relative to the proclamation of martial law over the counties of Pierce and Thurston, by Isaac I. Stevens, late governor of Washington Territory.

Whereas, in the prosecution of the late Indian war, Isaac I. Stevens, late governor of the Territory of Washington, proclaimed and enforced martial law in the counties of Pierce and Thurston, and for which he received unmerited condemnation by a certain resolution of the legislative assembly, passed January 16, 1857: Therefore—

Be it resolved by the legislative assembly of the Territory of Washington, That, in thus proclaiming and enforcing martial law, we believe Governor Isaac I. Stevens to have been actuated by motives of the purest patriotism, and with a desire only for the safety, welfare, and prosperity of the Territory.

Resolved, That, in our opinion, the state of the country demanded that stringent measures should be adopted, and such as could be effected by martial law only; and that there was absolute necessity for the same is sufficiently evidenced by the fact that the enemy, who, prior to its existence, were continually on the alert, and supplied with information of all operations after its enforcement, were continually struck by our gallant troops, and soon reduced to submission.

Resolved, That the resolution passed January 16, 1857, does not now, and did not at that time, express the opinion of a majority of the citizens of Washington Territory, but was in direct contravention of the same—a fact manifested by the triumphant election of Governor Stevens as our delegate to Congress, receiving in such election over two-thirds of the votes cast.

Resolved, That the secretary of the Territory be requested to trans-

mit copies of these resolutions to the President of the United States, the President of the Senate, the Speaker of the House of Representatives, and to the Hon. Isaac I. Stevens.

Passed house of representatives, January 9, 1858.

J. S. M. VANCLINE,
Speaker of the House of Representatives.

Passed council, January 19, 1858.

C. C. PAGETT,
President of the Council.

SECRETARY'S OFFICE,
Olympia, January 25, 1858.

A true copy. Attest:
[SEAL.]

C. H. MUNN,
Secretary of the Territory.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC No. 175.

MEMORIAL

OF

THE LEGISLATURE OF THE STATE OF WISCONSIN,

IN FAVOR OF

The erection of a light-house at the mouth of Kewannee river.

MARCH 1, 1858.—Referred to the Committee on Commerce, and ordered to be printed.

MEMORIAL to Congress for the erection of a light-house at the mouth of Kewannee river, in the county of Kewannee.

The memorial of the legislature of the State of Wisconsin respectfully represents:

That the mouth of the Kewannee river, in the State of Wisconsin, is a large and commodious harbor, easy of access from Lake Michigan, and affords a safe anchorage for vessels navigating said lake; that the village of Kewannee, which is located at the mouth of said river, is the county seat of said county of Kewannee; that a large and fertile section of country, abounding in pine and other timber, and now producing immense quantities of lumber, finds its only outlet into Lake Michigan through the mouth of said river; that the nearest points to said Kewannee at which light-houses have been erected are at Two Rivers, on the south, twenty-five miles distant from said Kewannee, and at Bailey's harbor, on the north, fifty miles distant therefrom; and that the wants of commerce on Lake Michigan, and the business interests of the country tributary to said Kewannee require that a light-house should be immediately erected at the mouth of said river.

Your memorialists, therefore, respectfully ask that an appropriation be made for the erection of a light-house at the mouth of said Kewannee river, in said county of Kewannee, in the State of Wisconsin.

WYMAN SPOONER,
Speaker of the Assembly.

C. LATHAM SHOLES,
Lieut. Gov. and President of the Senate, pro tem.

Approved February 12, 1857.

COLES BASHFORD.

This memorial originated in the assembly.

W. C. WEBB, *Chief Clerk.*

STATE OF WISCONSIN, } ss.
Secretary's Office,

The secretary of state of the State of Wisconsin does hereby certify that the foregoing copy has been compared with the original memorial in this office, and that the same is a true and correct copy thereof and of the whole of such original.

In witness whereof, I have hereunto set my hand and affixed the great seal of the State, at the capitol, in Madison, this fourteenth day of February, 1857.

[L. S.]

W. D. JONES,
Secretary of State

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 176.

MEMORIAL

OF

THE LEGISLATURE OF THE STATE OF IOWA,

IN FAVOR OF

Restricting the sale of the public lands to actual settlers.

MARCH 1, 1858.—Referred to the Committee on Public Lands, and ordered to be printed.

MEMORIAL of the general assembly of the State of Iowa to Congress, in favor of restricting the sale of public lands to actual settlers.

Your memorialists, the general assembly of the State of Iowa, respectfully represent that, in the opinion of this general assembly, the sale of the public lands to other than actual settlers has materially retarded the growth and prosperity of our State; that many large tracts of our best lands have been purchased by speculators, and places beyond the reach of the great mass of the emigrants who are seeking new homes within our borders, and thus sacrificing the interests of thousands of the enterprising and industrious poor for the benefit of a few non-producers.

Your memorialists will not attempt to enumerate the many evils which have resulted from this system, nor will they endeavor to portray the incalculable benefits that would accrue to the newer States and Territories from the proposed change.

Your memorialists, also, beg leave to represent that the sale of the public domain will be increased and rendered more uniform by thus facilitating its settlement and cultivation.

Your memorialists, therefore, pray your honorable body to adopt such measures as, in your wisdom, will best secure to actual settlers the exclusive right to purchase the public lands which are now or may hereafter be offered for sale, and for this purpose request the secretary of this State to furnish a certified copy of this memorial to each of our members of Congress.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved February 20, 1858.

RALPH P. LOWE.

I hereby certify that the foregoing is a true copy from the original roll on file in my office.

ELIJAH SELLS,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 177.

MEMORIAL

OF

THE LEGISLATURE OF THE STATE OF IOWA,

PRAYING

That a grant of land be made to the Territory of Nebraska, to aid in the construction of a railroad from the Missouri river, via the South Pass, to some point in Washington Territory.

MARCH 1, 1858.—Referred to the Committee on Public Lands, and ordered to be printed.

MEMORIAL to Congress praying for a grant of land to aid in the construction of a railroad from the Missouri river, *via* the South Pass, to some point in Washington Territory.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

Your memorialists, the general assembly of the State of Iowa, would state, as they are informed, the legislature of the Territory of Nebraska, at its session, A. D. 1857, did memorialize Congress that a grant of land ought to be made to that Territory to aid in the construction of a railroad, with its main trunk starting from some point on the Missouri river, between the northern boundary of the Omaha Indian reservation, as at present inhabited by the Omaha Indians, and the mouth of the Running Water river, with branches, not exceeding two, starting from other points within the above limits, and uniting with the main trunk westerly. The main trunk, or a branch, to start from a point on the Missouri river, in Dahcota county, in Nebraska Territory; said road running westerly by the nearest and best route up the valley of said Running Water, by the way of the "South Pass," in the Rocky mountains, or of any other pass north of said South Pass, to the western boundary of said Territory, with a branch from the main trunk, through the Black Hills, into the valley of the Yellow Stone river; thence by the nearest and best route northwesterly to the western boundary of said Territory, at some practicable pass through the Rocky mountains into Washington Territory: Therefore—

Your memorialists, the general assembly of the State of Iowa, believing that the construction of the said railroad would greatly tend to develop the resources and increase the prosperity of the Territory of Nebraska, and would also be of great advantage to the State of

Iowa, respectfully ask that the grant of land prayed for by the legislature of Nebraska Territory may be made to aid in the construction of said railroad.

Resolved, That the secretary of state be instructed to transmit a duly authenticated copy of the above memorial and this resolution to the President of the Senate and the Speaker of the House of Representatives of the United States, with the request that they be laid before their respective houses; and also a like copy to the governor of the Territory of Nebraska.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved February 20, 1858.

RALPH P. LOWE.

I hereby certify that the foregoing is a true copy from the original roll on file in my office.

ELIJAH SELLS,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 178.

RESOLUTION

OF

THE LEGISLATURE OF THE STATE OF IOWA,

IN FAVOR OF

The erection of a post office, United States court-house, and custom-house at Burlington.

MARCH 1, 1858.—Referred to the Committee on Commerce, and ordered to be printed.

JOINT RESOLUTION for an appropriation to build a custom-house, United States district court-house, and post office in the city of Burlington.

Resolved by the general assembly of the State of Iowa, That our senators in Congress be instructed, and our representatives be requested, to use all proper means to secure an appropriation from the general government for the purpose of building a custom-house, United States district court-house, and post office in the city of Burlington.

Resolved, That the secretary of state be requested to forward a certified copy of the above to each of our senators and representatives in Congress.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.

ORAN FAVILLE,
President of the Senate.

Approved February 20, 1858.

RALPH P. LOWE.

I hereby certify that the foregoing is a true copy from the original roll on file in my office.

ELIJAH SELLS,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 179.

JOINT RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF IOWA,

IN FAVOR OF

A grant of land to aid in the construction of a railroad from the northern boundary of Iowa, at a point where the St. Paul and Minneapolis railroad intersects said boundary, to Sioux City, on the Missouri river.

MARCH 1, 1858.—Referred to the Committee on Public Lands, and ordered to be printed.

JOINT RESOLUTION asking Congress for a grant of land to aid in the construction of a certain railroad.

Whereas a grant of land was made to the Territory of Minnesota by the 34th Congress of the United States to aid in the construction, among others, of a railroad from St. Paul, *via* Minneapolis, to the southern boundary of the Territory, in the direction of the mouth of the Big Sioux river; and whereas the greater part of the northwest portion of the State of Iowa, lying between the west branch of the Des Moines and Big Sioux rivers, is a vast prairie, fertile and well watered, but almost entirely destitute of timber, and, for this reason, not likely to be settled for many years without the aid of a railroad: Now, therefore—

Resolved by the general assembly of the State of Iowa, That our senators in Congress be instructed, and our representatives be requested, to use their best exertions to procure the passage of a bill making a grant of land to aid in the construction of a railroad from the north line of the State of Iowa, at the point of intersection of the said above described railroad with the said north line of the State, to Sioux city, on the Missouri river.

Resolved, That the secretary of state be instructed to forward a copy of the foregoing resolution to each of our senators and representatives in Congress.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.

ORAN FAVILLE,
President of the Senate.

Approved February 20, 1858.

RALPH P. LOWE,

I hereby certify that the foregoing is a true copy from the original roll on file in my office.

ELIJAH SELLS,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 180.

RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF CALIFORNIA,

IN FAVOR OF

The enactment of a law granting land to actual settlers in that State.

MARCH 1, 1858.—Referred to the Committee on Public Lands and ordered to be printed

JOINT RESOLUTION relative to donating Public Lands to actual settlers within the State of California.

Whereas the federal government holds a vast extent of public domain within the limits of this State adapted to all the wants and requirements of civilized life, and now unoccupied and unproductive; and whereas, the wisdom of the policy of donating the public lands to actual settlers has been demonstrated in the Territory of Oregon; and whereas, our isolated position, and the difficulties to be surmounted by the hardy emigrant in seeking a home on the shores of the Pacific, renders a liberal policy on the part of the general government expedient and proper; and whereas, our future prosperity and greatness, and the character and perpetuity of our institutions, depend mainly upon the number and permanency of our population and the development of our agricultural as well as mineral resources: Now, therefore,

Resolved, by the senate and assembly of the State of California, That our senators be, and they are hereby, instructed, and our representatives requested, to urge upon Congress the passage of a law donating to each actual settler within the State of California one hundred and sixty acres of any land now subject to settlement under the preemption laws of the United States: *Provided, however,* That said donations shall not extend to mineral lands of this State, either surveyed or unsurveyed.

Resolved, That his excellency, the governor, be requested to forward a copy of this preamble and resolution to each of our senators and representatives in Congress.

NIN. E. WHITESIDES,
Speaker of the Assembly.
JOS. WALKUP,
President of the Senate.

OFFICE OF SECRETARY OF STATE,
Sacramento, California, February 2, 1858.

I, Ferris Forman, secretary of state of the State of California, do hereby certify that the annexed is a true and correct copy of the original joint resolution now on file in my office.

[L. S.] Witness my hand, and the great seal of State, at office in Sacramento, California, the 2d day of February, A. D. 1858.

FERRIS FORMAN,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 181

RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF CALIFORNIA,

IN FAVOR OF

The establishment of a territorial government in Carson Valley.

MARCH 1, 1858.—Ordered to lie on the table and be printed.

CONCURRENT RESOLUTION relative to a territorial government in Utah.

Resolved by the assembly, the senate concurring herein, That, in view of the impending difficulties in Utah, and fully impressed with the importance of a speedy organization of a territorial government in Carson Valley, our senators in Congress are hereby instructed, and our representatives earnestly requested, to procure the passage of an act securing the establishment of said territorial government, with such boundaries as circumstances may warrant and require.

NIN. E. WHITESIDE,
Speaker of the Assembly.
JOS. WALKUP,
President of the Senate.

OFFICE OF SECRETARY OF STATE,
Sacramento, California, February 3, 1858.

I, Ferris Forman, secretary of state of the State of California, do hereby certify that the annexed is a true and correct copy of the original c ncurrent resolution," now on file in my office.

[L. S.] Witness my hand and the great seal of State, at office, in Sacramento, California, the 3d day of February, A. D. 1858.

FERRIS FORMAN,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 182.

RESOLUTION AND MEMORIAL

OF THE

LEGISLATURE OF THE TERRITORY OF NEBRASKA,

PRAYING

That an appropriation be made to bridge the Platte river.

MARCH 4, 1858.—Referred to the Committee on Commerce, and ordered to be printed.

JOINT RESOLUTION AND MEMORIAL.

To the honorable the Senate and the House of Representatives of the Congress of the United States:

Your memorialists, the council and house of representatives of the Territory of Nebraska, now assembled, would most respectfully represent that the interests of the people of this Territory, and of the country at large, would be greatly subserved by an appropriation of dollars for the purpose of bridging the Great Platte or Nebraska river, at some point within fifty miles of its mouth.

The reasons which might be urged in support of this appropriation are many and obvious. Your memorialists, however, wish to call attention to a few of them:

First. Owing to the uncertain nature of the soil in which this river makes its bed, no reliable ferry can be established across it, the current often changing in a single night, and large and impassable sand-bars are formed where twenty-four hours before no obstruction was offered to the passage of ferry boats. Thus virtually one portion of the Territory is separated from the other, to the great detriment of their social relations and commercial pursuits.

Second. The Platte river, being thus a barrier to the free social and commercial intercourse of the two sections of the Territory which it separates, has been a fruitful and ceaseless source of dissension and strife between our people, giving rise to most, if not all, of the political troubles which have disturbed our Territory.

Third. In compliance with the known wishes of the people of the Territory, your memorialists have passed an act to re-locate the seat of government at a point in the valley of the Platte river, to be hereafter selected; and in order that the said capital may be accessible to

all parts of the Territory, and no barrier exist to the free intercourse of the people north and south of that river, such bridge is absolutely necessary.

Fourth. The said river is a serious obstacle in the way of military operations, and of the efficient construction of important roads required by the wants of that branch of the government service.

Other reasons might be urged in support of such an appropriation, but your memorialists cannot but believe that its necessity will be apparent to your honorable bodies, and, therefore, respectfully urge your early action in the matter. And, as in duty bound, they will ever pray, &c.

Resolved by the council and house of representatives of the Territory of Nebraska, That this memorial and joint resolution be signed by the president of the council and the speaker of the house of representatives, and copies thereof forwarded to the President of the Senate of the United States, the Speaker of the House of Representatives, and our delegate in Congress.

J. H. DECKER,
Speaker of the House of Representatives.
LEAVITT L. BOWEN,
President of the Council.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 183.

RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,

IN FAVOR OF

A donation of public lands to the several States and Territories to aid and encourage scientific education in agriculture and the mechanic arts.

MARCH 4, 1858.—Read and ordered to be printed.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

JANUARY SESSION, *A. D.* 1858.

RESOLUTION relative to the appropriating of public lands of the United States for the benefit of agriculture and the mechanic arts.

Resolved, That the senators from this State be instructed, and the representatives be requested, to use their exertions in Congress for the passage of an act donating public lands to the several States and Territories in the Union, for the aid and encouragement of scientific education in agriculture and the mechanic arts.

Resolved, That the secretary of state be instructed to transmit a copy of the above resolution to each of the members of Congress from this State, immediately after its passage.

A true copy. Attest:

JOHN R. BARTLETT,
Secretary of State.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.

SECRETARY'S OFFICE,
Providence, February 22, 1858.

SIR: Prefixed, I beg leave, in accordance with a resolution of the general assembly of this State, to transmit you resolutions which have just passed that body, in relation to an act now before the Congress of the United States, for the donation of public lands to the several

States and Territories in the Union which may provide colleges for the benefit of agriculture and the mechanic arts.

With high respect, I have the honor to remain your most obedient servant,

JOHN R. BARTLETT,
Secretary of State.

Hon. PHILLIP ALLEN,
United States Senate.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 184.

RESOLUTION

OF

THE LEGISLATURE OF THE STATE OF MAINE,

IN FAVOR OF

The distribution of a portion of the public lands among the several States for educational purposes.

MARCH 4, 1858.—Ordered to lie on the table and be printed.

STATE OF MAINE.

RESOLVE in relation to the distribution of a portion of the public lands belonging to the United States.

Resolved, That our senators and representatives in Congress be requested to use their efforts to procure a fair and equitable distribution of a portion of the public lands belonging to the United States among the several States for educational purposes.

Resolved, That the governor be requested to transmit to each of our senators and representatives in Congress a copy of these resolves.

IN THE HOUSE OF REPRESENTATIVES,
February 24, 1858.

Read and passed.

JOSIAH H. DRUMMOND,
Speaker.

IN SENATE, *February* 24, 1858.

Read and passed.

SETH SCAMMAN,
President.

Approved February 26, 1858.

LOT M. MORRILL.

OFFICE OF SECRETARY OF STATE,
Augusta, *February* 27, 1858.

I hereby certify that the foregoing is a true copy of the origina deposited in this office.

NOAH SMITH, JR.,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC No. 185.

MEMORIAL AND JOINT RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF IOWA,

IN FAVOR OF

The establishing of a mail route from the city of Des Moines, in that State, to White Cloud, in Kansas.

MARCH 4, 1858.—Referred to the Committee on Post Offices and Post Roads and ordered to be printed.

MEMORIAL AND JOINT RESOLUTION to Congress for additional mail facilities.

To the Senate and House of Representatives of the United States:

Your petitioners, the general assembly of the State of Iowa, respectfully represent to your honorable body, that at present great inconvenience is suffered by the citizens of the southwestern counties of Iowa, for lack of mail facilities for direct communication with Des Moines, the capital of the State; and still greater inconveniences are suffered by the citizens of Iowa generally, for want of a direct line of communication with western Missouri and the Territory of Kansas, the mails and travellers for which sections of country having at present to pass over one of two circuitous routes, to wit: the one by Council Bluffs, and thence south through Nebraska or western Iowa; or down to St. Louis, and thence up the Missouri river.

Thus mails are subjected to great and serious delays and the travelling public to much unnecessary expense.

Your petitioners therefore respectfully ask that a mail route be established from the city of Des Moines, Iowa, by way of Winterset, in Madison county; Afton, in Union county; Bedford, Taylor county, Iowa, and Mound city, in Holt county, Missouri, to White Cloud, in the Territory of Kansas; and that the mails be transmitted over said route tri-weekly, in two or *four*-horse coaches, and your petitioners will ever pray, &c.

Resolved, That the senators in Congress be instructed, and our representatives be requested, to urge, by their votes and influence, the establishment of the mail route and mail facilities prayed for in foregoing memorial.

Resolved, That a copy of this memorial and resolution be fowarded

to each of our senators and representatives in Congress by the secretary of state.

STEPHEN B. SHELLADY,
Speaker of the House of Representatives.
ORAN FAVILLE,
Speaker of the Senate.

Approved February 11, 1858.

RALPH P. LOWE.

I certify the foregoing to be a true copy from the original roll on file in my office.

ELIJAH SELLS,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 186.

IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1858.—Received from the Court of Claims and referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

PETER PARKER *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Letters from the Secretary of State, dated July 24, 1854, May 10, 1856, November 19, 1857, referred by the House of Representatives, and returned to that House.
3. Claimant's brief.
4. Brief of the United States Solicitor in the case of Ferdinand W. Cox, and submitted as his brief in this case.
5. Opinion of the Court.
6. Bill for relief of claimant.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said Court at Washington, this fourth day of March, A. D. 1858.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss.*

To the Court of Claims:

The petition of Peter Parker, commissioner of the United States to China, respectfully represents: That before his appointment to his present position, which took place during the year 1855, he was the secretary of legation and Chinese interpreter at Canton, China.

That, in consequence of the commissioner's absence, he acted, and was recognized by the government of the United States, as chargé d'affaires, *ad interim*, for the following periods, viz:

From May 26, 1852, to January 31, 1853;
From January 27, 1854, to April 14, 1854; and
From December 9, 1854, to May 4, 1855.

Your petitioner further represents: That it has been the uniform practice and usage of the government, where a secretary of legation has acted as chargé d'affaires, *ad interim*, in consequence of the absence of the chief of the legation, to allow the secretary so acting the difference between his stated salary and that of a chargé des affaires, which was, at the time your petitioner rendered the services aforesaid, four thousand five hundred dollars per annum, and that Congress has heretofore allowed, and he has received, compensation at that rate for services rendered in that capacity at Canton, China.

Your petitioner further represents: That the President of the United States, who is charged by the Constitution and laws with the regulation and direction of the diplomatic intercourse of the government with foreign powers, in the instructions issued by the Department of State, and which were furnished him at the time of his appointment as secretary of legation aforesaid, uses the following language: "If, from circumstances or accident, during your connexion with the legation of the United States, the place of minister should become vacant, in such case it will be your duty, in the absence of all other provision on the part of this government upon the subject, to retain the charge of the seal, cypher, records, books, and archives of the legation of the United States in that capital, and to take upon yourself the discharge of the ordinary functions of the mission, as chargé d'affaires of the United States, *ad interim*, till the vacancy be otherwise supplied; but it is to be distinctly understood, that this circumstance will not give you any claim to the outfit or salary of a chargé d'affaires, or any title whatever to assume the duties of that station, if the vacancy be not permanent. Should there be a vacancy of any great duration in the legation of the United States, of a description which may render it just and proper, in the opinion of the President, that you should enjoy the benefit of the salary of a chargé d'affaires of the United States, while you perform the appropriate duties attached to that station, in such case the President will always be disposed to adopt the measures which may be deemed necessary to secure you a legal title to the advantage or a proportionable augmentation of salary." This, your petitioner avers, is a direct promise and undertaking, on the part of the United States, through their duly constituted agents, that whenever he performed the duties of chargé d'affaires, *ad interim*, he should have such an augmentation of salary as would make the same equal to that allowed a chargé duly appointed by the President of the United States, by and with the advice and consent of the Senate.

Your petitioner further represents: That for the first item in the account hereto annexed, which he asks may be taken and received as a part of this petition, amounting to $1,370 78, the Senate passed a bill for his relief at the last Congress; and the House of Representa-

tives, not having time to take final action thereon, referred the said bill to this Court, which is filed herewith. That for the second item in the said account, amounting to $433 31, the Committee on Foreign Relations of the Senate, at the second session of the last Congress, reported a bill for his relief, which was not acted upon for the want of time. That the third and last item in said account, amounting to $798 62, has never been presented to Congress, inasmuch as the service charged did not terminate until after the adjournment of the last session.

Your petitioner further represents that he is the sole owner of the claim herein set forth.

Your petitioner therefore prays that the Court will examine his claim, and report a bill for his relief to Congress.

And your petitioner will ever pray, &c.

THOMAS M. BLOUNT,
Attorney pro Petitioner.

THE UNITED STATES,

TO PETER PARKER, DR.

To salary as chargé d'affaires, *ad interim*, from May 26, 1852, to January 31, 1853, (8 months and 7 days,) at $2,000 per annum, being the difference between stated salary, as secretary of legation, and that of chargé d'affaires	$1,370 78
To salary from January 27 to April 14, 1854, (2 months and 18 days,) at same rate	433 31
To salary from December 9, 1854, to May 4, 1855, (4 months and 26 days,) at same rate	798 62
	2,602 71

PETER PARKER.

Harvey Lindsly, agent of Peter Parker, maketh oath that the several matters set forth in the foregoing petition are true, to the best of his knowledge and belief.

Sworn to before me, February, 1856.

Brief.

PETER PARKER *vs.* THE UNITED STATES. } Petitioner in Court of Claims.

Petitioner claims that the United States owe him $2,602 71, for performing the duties of chargé d'affaires in China, for three several terms, during the absence of the commissioner.—(See petition and account stated therein.)

Evidence that the duty was performed.

Letter from Hon. W. L. Marcy, Secretary of State, to Hon. James M. Mason, of March 10, 1856.

Evidence that petitioner was authorized by State Department to perform the duty charged for.

Letter from Hon. Lewis Cass, Secretary of State, to B. B. French, of November 19, 1857.

Precedents.

Appropriation by Congress to pay Peter Parker for performing same duty under like circumstances, in 1847.—(Statutes at Large, vol. 9, pp. 300 and 396.)

B. B. FRENCH,
Attorney for Petitioner.

IN THE COURT OF CLAIMS.

ON THE PETITION OF FERDINAND W. COX.

Brief of the United States Solicitor.

The claim is, 1st, for pay as chargé *ad interim* at Brazil, whilst Mr. Schenck was absent; and, 2d, for an outfit.

With respect to the outfit, the 1st section of the act of 1810, (2 Stat., p. 608,) has a proviso which limits the outfit to the amount of one year's salary to a minister *on going out of the United States*. This expresses what the word *outfit* implies in itself—that outfits are paid only to those ministers who are sent out of the United States. In this case, the claimant was, at the time of entering on his duties, already in Brazil, as secretary of legation, and the letter of the Secretary of State, which authorizes him to act as chargé *ad interim*, recognizes this fact.

But this, as well as the claim for compensation, is disposed of by the second section of the act of 1810, which provides that no compensation shall be paid to those who may be appointed to such an office unless the appointment shall be submitted to the Senate and ratified by that branch of the government. Cox's appointment was not approved by the Senate, and, therefore, he has no right to compensation—payment is positively prohibited by the act.

The mere filling of an office, or rendition of service, does not, of itself, entitle an officer to compensation. It is analogous to a fiduciary relation, in which the fiduciary does not entitle himself to pay at all unless by an express agreement; and unless the law expressly annexes

to the performance of certain duties the right to compensation in money, no such right is created.

In Dickens' case, the law expressly annexed to the offices which he filled a certain compensation; and he became entitled to the emoluments by becoming vested with the powers, and by discharging the duties of the stations. The circumstance that he was merely *acting* Secretary of State did not in the least take from his powers as Secretary. His acts had all the legal force of any other Secretary, and although he may not in fact have done as much and been called to cabinet councils, &c., that is a circumstance of which a court could not take notice. He might have been called to consultation and have done more than other Secretaries in that and other ways. He might have been one of the leading statesmen of the day, as such Secretaries *ad interim* often were. Mr. Monroe and Mr. Butler, and others, who at different times filled at the same time two places in the cabinet, and received compensation as well for the duties which they discharged as Secretary *ad interim*, as for the ordinary duties, were the most prominent politicians of the day, but had no greater legal power or responsibility than Mr. Dickens, whilst acting Secretary *ad interim*, and were not a whit better entitled to the compensation.

But these are cases unlike the present, in the fact that the law which provides for the making such appointments as they filled did not require that these appointments should be submitted to the Senate and confirmed as a condition precedent to the payment of any compensation.

M. BLAIR,
United States Solicitor.

IN THE COURT OF CLAIMS.

PETER PARKER *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

The petitioner states the following case: He was the secretary of legation and Chinese interpreter at Canton, China. In consequence of the commissioner's absence he acted, and was recognized by the government of the United States, as chargé d'affaires *ad interim* from May 26, A. D. 1852, to January 31, A. D. 1853; from January 27, A. D. 1854, to April 14, A. D. 1854; and from December 9, A. D. 1854, to May 4, A. D. 1855.

It has been the uniform practice and usage of the government, (he states,) where a secretary of legation has acted as chargé d'affaires *ad interim*, in consequence of the absence of the chief of legation, to allow the secretary so acting the difference between his stated salary and that of a chargé d'affaires, which was, at the time he rendered the services above mentioned, four thousand five hundred dollars *per annum*, and Congress has heretofore allowed, and he has received, compensation at that rate for services rendered in that capacity at Canton, China.

The President of the United States, (the petitioner alleges,) in the instructions issued by the Department of State, and furnished to the petitioner at the time of his appointment as secretary of legation, uses this language: "If from circumstances or accident, during your connexion with the legation of the United States, the place of minister should be vacant, in such case it will become your duty, in the absence of all other provision on the part of this government upon the subject, to retain the charge of the seal, cypher, records, books, and archives of the legation of the United States in that capital, and to take upon yourself the discharge of the ordinary functions of the mission, as chargé d'affaires of the United States *ad interim*, till the vacancy be otherwise supplied; but it is to be distinctly understood that this circumstance will not give you any claim to the outfit or salary of a chargé d'affaires, or any title whatever to assume the duties of that station, if the vacancy be not permanent. Should there be a vacancy of any great duration in the legation of the United States, of a description which may render it just and proper, in the opinion of the President, that you should enjoy the benefit of the salary of a chargé d'affaires of the United States, while you perform the appropriate duties attached to that station, in such case the President will always be disposed to adopt the measures which may be deemed necessary to secure you a legal title to the advantage or a proportionable augmentation of salary." This, the petitioner avers, is a distinct promise and undertaking on the part of the United States, through their duly constituted agents, that whenever he performed the duties of chargé d'affaires *ad interim*, he should have such an augmentation of salary as would make the same equal to that allowed a chargé duly appointed by the President of the United States, by and with the advice and consent of the Senate.

As to the first item of the petitioner's claim, the Senate at the last Congress passed a bill for his relief, but the House of Representatives referred it to this Court. As to the second item of his claim, the committee on foreign relations in the Senate, at the second session of the last Congress, reported a bill for his relief, but it was not acted upon. The last item has never been presented to Congress.

The petitioner prays that this Court will report to Congress a bill for his relief.

The Secretary of State, in a letter to the chairman of the Committee on Foreign Relations in the Senate, dated July 24, A. D. 1854, states that it appears, from the records and files of his department, that the petitioner was acting as chargé d'affaires *ad interim* from May 24, A. D. 1852, to January 31, 1853.

The Secretary of State, in another letter to the chairman of the same committee, dated May 10, A. D. 1856, states that it appears, from the records and files in his department, that the petitioner, who was late secretary and Chinese interpreter to the legation of the United States at Canton, had charge of that legation from May 26, A. D. 1852, to January 31, 1853; from January 27, A. D. 1854, to April 14, 1854; and from December 9, A. D. 1854, to May 4, 1855.

The Secretary of State, in a letter to B. B. French, esq., dated November 19, A. D. 1857, states that "from the 26th of May, 1852,

to the 31st of January, 1853, from the 27th of January, 1854, to the 14th of April, 1854, and from the 9th of December, 1854, to the 4th of May, 1855, Dr. Peter Parker acted as chargé d'affaires of the legation of the United States at Canton, not only with the approbation of this department, but, in the two former instances, under its express directions; and, in the last instance, under the sanction of the commissioner of the United States to China."

There is no proof before us of the instructions which, it is alleged in the petition, were given the petitioner at the time of his appointment as secretary of legation.

It appears from the evidence that the petitioner acted as chargé d'affaires *ad interim* at Canton for the several periods mentioned in his petition; for the first two under the express directions of the Department of State, and for the last under the sanction of the commissioner of the United States to China; but in each instance with the approbation of the Department of State. Our opinion is, that the petitioner, in contemplation of law, acted on these several occasions as chargé d'affaires *ad interim* by appointment of the President, and that, having already received his salary as secretary of legation, he is now entitled to receive for his services as chargé the difference between the former salary and that of a chargé.—(See the opinion of this Court in the case of Ferdinand Coxe *vs.* The United States.)

The account, stated according to the mode which prevails in the executive departments, is as follows:

For the first period.

From May 26 to June 30, 1852	$197 80	
" July 1 to December 31, A. D. 1852	1,000 00	
" January 1 to January 31, A. D. 1853	161 11	
		$1,358 91

For the second period.

From January 27 to March 31, A. D. 1854	355 55	
" April 1 to April 14, A. D. 1854	76 92	
		432 47

For the third period.

From December 9 to December 31, A. D. 1854	125 00	
" January 1 to March 31, A. D. 1855	500 00	
" April 1 to May 4, A. D. 1855	184 81	
		811 81
		2,603 19

We shall report to Congress a bill in favor of the petitioner for the sum of two thousand six hundred and three dollars and nineteen cents.

A BILL for the relief of Peter Parker.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is, directed, out of any money in the treasury not otherwise appropriated, to pay to Peter Parker the sum of two thousand six hundred and three dollars and nineteen cents, being in full for his services as chargé d'affaires *ad interim* at Canton, in China, at various periods between the dates of May 26, A. D. 1852, and the 4th day of May, 1855.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 187.

RESOLUTIONS

OF THE

LEGISLATURE OF THE STATE OF NEW JERSEY,

IN RELATION TO

The erection of a building at Trenton for the accommodation of the United States courts and the offices of the collector and postmaster.

MARCH 8, 1858.—Referred to the Committee on Commerce, and ordered to be printed.

STATE OF NEW JERSEY.

JOINT RESOLUTIONS relative to the erection of public buildings in the city of Trenton by the general government.

Whereas the public welfare would be promoted by having at Trenton a suitable building in which to hold the United States courts, where all the records pertaining to said courts could be kept, and in which the collector and postmaster could have convenient offices: Therefore—

1. *Be it resolved by the senate and general assembly of the State of New Jersey*, That the senators and representatives in Congress from this State be requested to use their exertions to obtain from the general government a sufficient appropriation to purchase a proper site, and to erect thereon such a building at Trenton.

2. *And be it resolved*, That inasmuch as the production and manufacture of iron are pursuits in which the people of this State, and of all the middle States, have a large interest, it is fitting that all the encouragement which can be constitutionally given by government to this great branch of public industry should be accorded to it, especially that enlargement of the home market which a judicious direction of the public expenditure in the use of iron for building purposes would create, we, therefore, join with the citizens of Trenton in advising that the building above named be of iron.

3. *And be it resolved*, That the governor be requested to send a copy of the foregoing preamble and resolutions to each of the senators and representatives in Congress from this State.

Approved February 24, 1858.

STATE OF NEW JERSEY:

I, Thomas S. Allison, secretary of state of the State of New Jersey, do hereby certify that the foregoing is a true copy of a preamble and joint resolutions passed by the legislature of this State, and approved February 24, 1858, as taken from, and compared with, the original now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Trenton, in said State, this fifth day of March, A. D. one thousand eight hundred and fifty-eight.

[L. S.]

THOS. S. ALLISON,
Secretary of State.

EXECUTIVE DEPARTMENT OF NEW JERSEY,
Trenton, N. J., March 5, 1858.

SIR: I have the honor to transmit herewith a copy of joint resolutions passed by the legislature of this State, agreeably to the requirements of said resolutions.

Most respectfully, your obedient servant,

WM. A. NEWELL,
Governor of New Jersey.

Hon. WILLIAM WRIGHT.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 188.

RESOLUTIONS

OF THE

LEGISLATURE OF THE STATE OF CONNECTICUT,

INSTRUCTING

The senators and requesting the representatives of that State in Congress to vote against the admission of another slaveholding State into the Union.

MARCH 8, 1858.—Ordered to lie on the table and be printed.

STATE OF CONNECTICUT.

GENERAL ASSEMBLY—*May session*, 1857.

Resolved, That as the fathers of American liberty held, so do "we hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, *liberty*, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed;" that as the fathers of the republic designed to favor no particular class of men, but to establish a government giving equal political rights to all, and the greatest amount of liberty consistent with public safety, we maintain that the great purpose of our national government should be to secure and protect those rights, and make perpetual the blessings of *liberty*.

Resolved, That slavery, being contrary to the principles of natural right, founded upon injustice and fraud, at war with the principles upon which our government is founded, injurious to the growth and prosperity of the country, and a reproach to a people professing to love liberty, ought never to receive the national sanction; that while we recognize it as a local institution, maintained by force of the law of the State where it exists, and over which we have no control, and for which we have no responsibility, it is our right and our duty to resist to the last every attempt to extend it into the Territories of the republic.

Resolved, That a majority of the judges of the Supreme Court of the United States, in the recent case of Dred Scott, in declaring that a

free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a citizen within the meaning of the Constitution of the United States, and is not entitled to sue in a court of the United States, and that no State can make him such citizen; that Congress has no power to prohibit slavery in the Territories; that every slave-owner may carry his slaves into the Territories and hold them therein as slaves; that the federal government recognizes slaves as property, and pledges itself to protect it in the Territories, and that the Missouri compromise act was void, when such declarations or opinions were not necessary for the decision of the case before said court, have departed from the usages which have heretofore governed our courts; have volunteered opinions which are not law; have given occasion for the belief that they promulgated such opinions for partisan purposes, and thereby have lowered the dignity of said court, and diminished the respect heretofore awarded to its decisions.

Resolved, That the resolutions of the general assembly of this State, passed in 1849, declaring that Congress has full constitutional power to prohibit slavery in the Territories of the United States by legislative enactment; that the people of Connecticut, while abiding by the compromises of the Constitution, and averring their attachment to the federal Union, are unalterably opposed to the extension of slavery into free territory, and the further extension of its influence into the councils of the federal government; that in resisting the extension of slavery we do not make a sectional issue, nor oppose the interests of the people of the South, express *now*, as then, the sentiments of the people of Connecticut.

Resolved, That the people of Connecticut deeply sympathize with their brethren in the Territory of Kansas in their struggles against the aggressions of slavery, and earnestly desire that they may continue to resist, by all lawful means, until they shall make Kansas a free State.

Resolved, That our senators in Congress are hereby instructed, and our representatives in Congress are hereby earnestly requested, to vote always, and in every stage of the question, against the admission of another slaveholding State into the federal Union.

Resolved, That his excellency the governor be requested to transmit a copy of these resolves to the President of the United States, to the governors of each of the States and Territories, and to each of our senators and representatives in Congress.

STATE OF CONNECTICUT,
Office of Secretary of State.

I hereby certify that the foregoing is a true copy of the resolutions passed by the general assembly of the State, at its May session, A. D. 1857, on record in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said State, at Hartford, this fourth day of July, one thousand eight hundred and fifty-seven. [SEAL.]

ORVILLE H. PLATT,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 189.

RESOLUTION

OF

THE LEGISLATURE OF THE STATE OF IOWA,

IN FAVOR OF

The erection of a marine hospital, custom-house, and post office in Muscatine, in that State.

MARCH 8, 1858.—Referred to the Committee on Commerce, and ordered to be printed.

JOINT RESOLUTION for an appropriation to build a marine hospital, United States custom-house, and post office in Muscatine, Iowa.

Resolved by the general assembly of the State of Iowa, That our senators in Congress be instructed, and our representatives requested, to use their best exertions to obtain from Congress an appropriation to build a marine hospital, United States-custom house, and post office building in the city of Muscatine.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.

ORAN FAVILLE,
President of the Senate.

Approved February 27, 1858.

RALPH P. LOWE.

I hereby certify that the foregoing is a true copy from the original roll on file in my office.

ELIJAH SELLS,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 190.

IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submits the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

JACOB BIGELOW, ADMINISTRATOR OF FRANCIS CAZEAU, *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Claimant's brief.
3. United States Solicitor's briefs.
4. Opinion of Judges Blackford and Scarburgh, adverse to the claim.
5. Opinion of Judge Gilchrist, in favor of the claim.

Many original papers in this case have been received from the Treasury Department. The most important are printed in the opinions of the judges. The originals are, by order of the Court, retained by the chief clerk, to be laid before the committees of Congress when desired, and then, by the requirement of the Secretary of the Treasury, to be returned to the Treasury Department, where they properly belong.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this fourth day of March, A. D. 1858. [SEAL.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Judges of the United States Court of Claims:

The petition of Jacob Bigelow respectfully represents: That in the year 1844 letters of administration were granted to him by the orphans' court of the county of Washington, in the District of Columbia, on the personal estate of Francis Cazeau, late of Canada, which still remain in force and unrevoked; and that he had previously received from the heirs of said Cazeau, residing in Canada, full powers to represent the claims of their said ancestor upon the government of the United States.

Your petitioner shows, that Francis Cazeau was a merchant, of large fortune and great influence, residing in Montreal, at the commencement of the American revolution, and warmly espoused the cause of the revolted colonies, rendering them essential services by his labors, his influence, and his wealth, in consequence of which his property was confiscated, and he was reduced to poverty; and that among the services rendered and the losses endured by him, entitling him to pecuniary remuneration from the government of the United States, were the following:

In the beginning of the year 1777 Cazeau entered into a verbal agreement with General Arnold to furnish supplies to the American army, which was confidently expected in Canada in the spring of that year; for which supplies he was to receive the customary market price, together with all expenses, and the usual and reasonable commission. He accordingly purchased eight thousand bushels of wheat, at a cost of $8,000, and had them ground into flour and packed into barrels, ready for the American troops; but, in consequence of the failure of the American army to invade Canada, as expected, and Cazeau's arrest and imprisonment for favoring the cause of the Americans, this flour was ruined, and became a total loss to him, with his expenses and commissions, amounting to $2,633 30.

In the spring of the same year, in pursuance of the same agreement, Cazeau despatched three batteaux, laden with wines, spirits, cheese, hats, and other articles, suitable for the American army, costing $4,000, to Ticonderoga, to be delivered to any American officer commanding on Lake Champlain, or the American general commanding at Ticonderoga. The American forces had vacated that post, but, whilst the boats were there awaiting further orders from Cazeau, made a descent upon the place, and captured and plundered the boats as enemy's property, thus occasioning a loss to Cazeau of the cost of these supplies, as well as of the expense of procuring and forwarding them, and the commission stipulated, amounting, together, to $1,404 43.

About the same period Cazeau had incurred sundry expenses, amounting to $276 64, for procuring intelligence for the American army.

And your petitioner further shows, that the claims of Cazeau, on these and other grounds, having been presented to the American Congress, resolutions were passed by Congress, on the 18th of March, 1784, directing a settlement of the claims, recognizing the right to remuneration for supplies furnished to the American troops, allowing

interest, at the rate of 6 per cent. per annum, from the year 1777, and directing Cazeau's oath to be received in support of such other evidence as the circumstances of the case would admit of; that, by a resolution of June 7, 1785, the commissioners for settling the accounts of the State of New York with the United States were directed to examine the accounts of Canadian refugees who had furnished supplies to the American army; that in July, 1785, the commissioner, Mr. Barber, reported in favor of Cazeau's claim for the supplies, commissions, and expenses, and his advances to procure intelligence, although he expressed the opinion that a special act of Congress was necessary to sanction payment for the commissions and expenses.

Your petitioner further shows, that in January, 1817, after a full investigation, a committee of the Senate made a report in favor of the claim, upon the following statement thereof:

THE UNITED STATES

In account with FRAN. CAZEAU, *Dr.*

March, 1777.	For 8,000 bushels of wheat		$8,000 00
May, 1777.	For 3 boats, with brandy, &c		4,000 00
1778, 1779, 1780.	For advances, to gain intelligence		276 64
			12,276 64
	Interest on $12,276 64, from 1777, say forty years		29,463 60
	Expenses and commission on wheat		2,633 30
	Expenses and commission on brandy, &c		1,404 43
			45,777 97
February, 1783.	Cr. cash on account	$1,000 00	
	Interest, say thirty-four years	2,040 00	
			3,040 00
			42,737 97

At the same session a bill was passed for the payment of the said sum of $42,737 97 to the legal representatives of Francis Cazeau.

Your petitioner further shows, that the heirs of Mr. Cazeau have never received any of the benefit intended for them by this law, and he will proceed to state the causes of this unexpected result.

Mr. Cazeau, despairing of receiving justice at the hands of the United States, went to France, and in the year 1807, in his seventy-eighth year, when broken down by grief and infirmity, was induced, by the practice of gross imposition upon him, to execute a power of attorney to one Corbeaux, to prosecute this claim for him, and an assignment to Corbeaux of three-fourths of the claim, for the nominal consideration of $200,000, not one cent of which, however, was ever paid to him. At the same time a collateral agreement was executed between the parties, limiting the time for Corbeaux's recovery of the claim to two sessions of Congress, and reserving to Cazeau the right of revocation. In less than five months after its execution, in April,

1808, Cazeau revoked the power of attorney, and had criminal proceedings instituted against Corbeaux; in consequence of which, the original power and assignment were surrendered to Cazeau, and annulled, and have ever since been in possession of himself and his heirs, until filed with their papers before Congress. Cazeau subsequently notified the government of the United States that he still held the claim. Corbeaux, however, in the year 1808, procured from the American consulate, where they had been recorded, a copy of the assignment and power, which any one might have procured on payment of the fees, and remaining quiet until the death of Cazeau, in 1815, proceeded then to concoct a scheme for defrauding the heirs. He executed a power of attorney to one James Grubb, in London, who substituted for himself one Stewart, and the latter came to this country, and by means of said copy, and copies of original papers, which he stated had been burnt in the Treasury Department, induced Congress to pass the act of 1817, aforesaid, in favor of the representatives of Cazeau, and drew the money thereby appropriated from the treasury.

The original papers referred to by him, including the assignment to Corbeaux, had in fact been sent to General Mason, of Georgetown, with a power of attorney, in 1809. Whilst he awaited additional documents, the war with Great Britain broke out, and it was deemed inexpedient and useless to press the claim, and Cazeau dying soon after, General Mason considered his power revoked, and two years afterwards delivered the papers to Cazeau's heirs, by whom they have been presented to Congress.

Your petitioner shows, as the strongest proof of Stewart's fraud, that no part of the money received by him has ever been paid to the heirs of Cazeau.

Your petitioner further shows, that the payment to Stewart was made upon a mere copy of a copy, *purporting on its face to be a copy*, without, as far as appears, any inquiry as to the original, and certainly without any evidence, genuine or spurious, to account for its non-production, without any notice to the heirs of Cazeau, and without any default on their part, after the assignment to Corbeaux had been annulled and surrendered, and the power of attorney had been revoked in fact by Cazeau in his lifetime, and in law by his death, and the fact of his death had been communicated to the government by Stewart himself. Your petitioner shows that both the fact of its being a copy, and the date of the instrument presented by Stewart, (its presentation being ten years after its date,) were sufficient to excite suspicion, and put the officers of the treasury upon inquiry; and he is advised that their payment of the money was in their own wrong, and no discharge to the government, and that he is entitled both upon the original merits of the claim, as founded on a valid and executed contract, and under the act of Congress of March 3, 1817, adjusting and liquidating the claim to the whole amount appropriated by that act, with interest, with the exception to be presently mentioned.

Your petitioner shows that shortly after the money was paid to *Stewart, one of* the heirs of Cazeau, having accidentally heard of the

passage of the act of 1817, came to Washington to draw the money, and thus discovered the fraud practiced upon them; that ever since said date they and your petitioner have been earnestly seeking to recover this and other claims of Cazeau from the government; that in the year 1836 this claim was referred, by a resolution of the Senate, to Virgil Maxcy, then Solicitor of the Treasury, and a full and favorable report made upon it by him; that in June, 1844, a bill was passed for the payment of one-fourth of the amount appropriated by the act of March 3, 1817, with interest from May, 1818, amounting to $27,352 32, which sum was received by your petitioner; that favorable reports upon the residue of the claim were made in the House of Representatives in 1837, 1846, and 1848, to which reports, as well as that of January 30, 1817, in the Senate, your petitioner refers for a more full history of the claim.

And your petitioner further shows that no part of the claim has been assigned by him, or the heirs of Cazeau, to any other person, but it belongs wholly to the estate of Cazeau.

And your petitioner states the claim now presented by him as follows:

Amount appropriated by the act of March 3, 1817	$42,737 97
Interest from May, 1818, to 1844	66,671 31
	109,409 28
Cr. then paid	27,352 32
	82,056 96
Interest on $42,737 97, from June 15, 1844, say to June 15, 1855	28,207 06
Amount now due	110,264 02
Additional interest till paid	.....
	.....

Respectfully submitted.

J. BIGELOW,
Administrator on the estate of the late François Cazeau.

DISTRICT OF COLUMBIA,
County of Washington.

On this first day of August, A. D. 1855, before the subscriber, a justice of the peace in and for the county aforesaid, personally appears Jacob Bigelow, and makes oath, according to law, that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

THOMAS DONOHO,
Justice of the Peace.
JOHNSON & COX,
Attorneys for Petitioner.

UNITED STATES COURT OF CLAIMS.

THE PETITION OF JACOB BIGELOW, ADMINISTRATOR OF FRANCIS CAZEAU.

Brief of Claimant.

The facts of this case sufficiently appear in the petition.

This is in the nature of a suit against the United States, in which the petitioner makes out his case by producing the act of Congress of March 3, 1817, c. 243, directing payment of $42,737 97 "to the *legal representatives* of Francis Cazeau, late merchant at Montreal, or to his or their assignee or attorney, or other person lawfully entitled to receive the same, and filing his letters of administration, showing him to be the *legal representative* of Cazeau."

The United States defend, on the ground of payment to one authorized to receive, under an assignment and power of attorney, executed by Cazeau in his lifetime.

In answer to this:

1st. It is contended that such alleged instrument, if it existed in force at the time of Cazeau's death, became thereby inoperative; so that thereafter there was no assignee, or attorney, or other person, lawfully authorized to receive, under said instrument.

That the death of the principal operates to revoke a power of attorney, will not be denied.—(Hunt *vs.* Rousmanier, 8 Wheat., 174.)

But it will be said that the assignment survived and coupled the power with an interest, which prevented it from expiring.

To this it is answered, that an unliquidated claim against the United States is not the subject of an assignment; that such assignment can transfer no interest, and can only be regarded as an authority to receive the money—a naked authority, which expires upon the death of the principal.—(See United States *vs.* Robeson, 9 Pet., 319.)

2d. It is denied that any valid assignment or power of attorney existed even at the time of Cazeau's death, much less at the time of the payment. The burden of proof to show the existence of such an instrument is on the United States. How can they show it?

They offer in evidence, we suppose, the voucher upon which the payment was made, and which is certified by the American consul at Paris, in 1807, to be a true copy of a record in his office.

We object, that a copy is not admissable; that the original must be produced, or its absence satisfactorily accounted for, which cannot be done by the government. This is a well-settled rule of law.—(1 Greenl. on Ev., § 82, 86, 87.)

Suppose I owe money to A B and C D presents to me a *copy of* a draft on me, in his favor, from A B upon which I pay the money. In a subsequent suit against me by A B for his debt, could I, under the plea of payment, offer in evidence the copy and the payment upon it? What would be thought of a bank paying upon a copy of a check by a depositor? And how much more inadmissible, as a defence, would the payment be, in the cases supposed, if, as in this,

the copies do not even purport to be transcribed from the original, but to be copies of a copy in the hands of a third party, to which any one may have access! And how utterly indefensible the act of payment, when, in addition, the copies bear date nine years before presentation!

It is too plain for argument, that payment in such cases would be made to one not authorized to receive, and would be no discharge against the real creditor.

That the payment was made in good faith, and without suspicion of fraud, would obviously not better the case; for in no instance can a creditor be prejudiced by deceptions practiced on his debtor by third persons, without his knowledge or privity, and without negligence on his part.

But, in fact, this would be a case of the grossest negligence, and legal notice of fraud, on the debtor's part. The very ground of the rule excluding secondary evidence is, that the withholding of better evidence raises a presumption of fraud.—(1 Greenl. on Ev., § 82, citing Tayloe *vs.* Riggs, 1 Pet., 591.) The production of a copy, then, in this case, without accounting for the original, was itself legal evidence and notice to the government of fraud. This, added to the remote date of the instrument, was sufficient to put the government upon inquiry and excite suspicion, and to effect them with the consequences of neglect.

Additional evidence of gross negligence on the part of the government is found in the fact that, at the time of the payment, no legal evidence was produced even to show this copy to be a true copy of the original; nor could that be proved now, unless by the claimant's admissions. There is no law either authorizing or directing such instruments to be recorded in the American consulate; consequently, neither that record, nor copies from it, would be any evidence in law of the contents of the original; and the consul's certificate is no more than the certificate of a private person, as to the contents of a book in the consul's office.

But, failing to prove the existence of the assignment and power otherwise, the government offer, we suppose, the claimant's admissions. What do they amount to, taken together, as they must be? The claimant produces and files a paper, purporting to be an original assignment and power from Cazeau to Corbeaux, with which the copy corresponds. If the government resort to this to prove the fidelity of the *copy*, then they admit the original to be in possession of Cazeau's representatives, and all the consequences which, as we shall hereafter see, flow from that fact.

The Secretary of the Treasury seems to doubt whether this was filed by Cazeau's heirs. It is endorsed, "Annulled and given up." Stewart would hardly have filed it, or the money been paid on it with this endorsement; otherwise, the case is still stronger for the claimant. But we have Mr. Maxcy's report and the petitioner's affidavit settling the matter.

The Secretary also speaks of it as signed *in duplicate*. This is not the fact. There is no evidence of it.

The admission by the claimant of the original existence of an assignment, in fact, is qualified by a denial of its validity, its *legal* existence, at any time—still more of such legal existence at the time of Cazeau's death, or of the payment made by the United States. The whole admission must be taken together—(1 Greenl., § 201)—and, so taken, it is not an admission of that which the government must prove, viz: the legal existence of the assignment at the time of payment.

It may be true that the Court may consider all parts of the admission; may believe part and disbelieve part; may believe the admission and disbelieve the denials. If so, the United States have produced some admissible evidence, and the question will be as to its weight.

It was not necessary to make any admission. The heirs of Cazeau might have denied the existence of any assignment, and the government never could have proved it. The candor of the admission made gives credibility to the denial of the validity of the assignment, and the assertion of its annulment and surrender. If it existed in force, Stewart ought to have had it, or to have proved its existence and accounted for its non-production. He ought to have shown some reason why Corbeaux's claims were not presented in Cazeau's lifetime, or for nine years after the date of the alleged assignment. His failure to do all this irresistibly fortifies the claimant's denials, and gives to his admission almost the force of proof in his favor.

Nor do the facts make out a case of neglect on Cazeau's part, enabling Corbeaux to practice this deception upon the government. He did nothing to put it in Corbeaux's power to mislead. He did not give the copy or know of its being given, nor could he have prevented it. He was not bound to anticipate that Corbeaux would attempt so bold a fraud, still less that the government would be imposed on by so shallow a device, and, consequently, was not bound to forewarn them against it.

It may be confidently asserted, then, that the government utterly fail to sustain their defence of payment; that they do not even produce a particle of *competent* much less *sufficient* evidence, excepting, perhaps, a supposed admission, which has no force at all.

But the claimant produces positive evidence to disprove the defence of the government.

First, he produces the original instrument of assignment, the identity of which has never been questioned. Prima facie, the claimant's possession of it is lawful. It is presumptive evidence, therefore, that Corbeaux was not entitled to it, and, consequently, that it was either never delivered, which is essential to give it force, or that it was afterwards annulled and surrendered.—(1 Greenl. on Ev., § 34, 38.)

We have, then, the presumption of fraud, the presumption against the existence of a valid original, raised by the presentation of a copy only by Stewart, nine years after its date, without accounting for the original, fortified by the presumption of concealment and surrender, raised by the claimant's possession of the original. This makes assurance doubly sure.

It has been objected that we ought to show a judicial cancellation

of the instrument; in reference to which, it suffices to challenge the production of a single authority or principle of law to countenance such a position. What more natural, usual, or legal method of annulling a contract, than to surrender it to the party bound by it? What would be thought of Cazeau, with the original in his possession, and no legal evidence of its existence in anybody else's hands, filing a bill to set it aside, or to set aside a *copy* of it in somebody's possession?

Cazeau did proceed against Corbeaux criminally; but, as appears from the record of that proceeding on file, there could be no order for the cancellation of the instrument in a *criminal* proceeding; but it was probably surrendered in consequence of that proceeding.

Next, we have the fact that Cazeau did notify the government, immediately after the date of the alleged assignment, that he still held the claim.—(See Report in House Doc. No. 355, 28th Cong., first session.)

In the next place we have the facts set forth in the report upon this claim, of Virgil Maxcy, Solicitor of the Treasury in 1836, (see House Doc. 270, 30th Cong., first session,) and the proofs referred to in said report, viz: That no part of the consideration stipulated in the assignment was paid to Cazeau; that, by a collateral, contemporaneous agreement, the power of attorney was to last only during two sessions of Congress; that fraud and imposition were practiced on Cazeau; that, in less than five months after its execution, he revoked the power of attorney and instituted criminal proceedings against Corbeaux, (in consequence of which, doubtless, the instrument was surrendered;) that, as early as 1809, Cazeau sent all his original papers, with a power of attorney, to General Mason; that Cazeau's heirs never received any of the money; and, finally, the falsehoods of Stewart's statements to Congress—all going to establish conclusively the fraud of Stewart and Corbeaux, and to confirm those evidences of it which ought to have prevented the payment to Stewart.

As to the effect of payment to the wrong person.—(See Opinions Att. Gen., Roger's Case, v. 5, p. 183, and Smith's Case, v. 4, p. 298; Tiernan *vs.* Rescaniere's adm'rs, 10 Gill and J., 225; Chapman *vs.* Williams, 7 H. and J., 157.)

As to interest:

The act creating the Court of Claims assumes that individuals have claims *of right* against the United States. There must be, then, some rule of right, binding the government. It would seem to be the same that regulates the dealings of individuals; for, after all, a contract with the government is but a contract with individuals. The highest evidence of what is right between individuals is the general law of the land. By the general law of this country, every creditor is entitled to interest from the day when his principal debt is payable, if it be a liquidated demand.—(1 Hare & Wallace's American leading Cases, pp. 341–351.)

It is considered due from States.—(Respub. *vs.* Mitchell, 2 Dall., 101; Milne *vs.* Rempub., 3 Yeates, 102; Adams *vs.* Beach, 6 Hill's N.

Y. Rep., 272; and from the United States, U. S. *vs.* Cogswell, 3 Sumner, 204; Thorndike *vs.* United States, 2 Mason, 1.)

Usage may be resorted to, to construe an express or implied contract, but not to ascertain rights growing out of default of performance. The contract does not contemplate any default, and is not therefore made with reference to any usage determining the consequences of default.

And an usage which is binding must be uniform, compulsory on all, and reasonable.—(2 Greenl. Ev., § 250, 251.) The usage alleged in this case would be one-sided, arbitrary, and unreasonable, and is not uniform.

But, in fact, it is not the usage of the government to pay no interest on claims. Out of 1,808 claims allowed between the revolution and April 11, 1836, it appears 1,754 were paid with interest, and only 54 without; and of the latter, 19 passed the House of Representatives with interest, and many have since been paid with interest.—(See resolutions, laws, &c., relating to half-pay, &c., published in pursuance of a resolution of the House of Reps. of April 11, 1836.)

In this case there is a clear right to interest on additional grounds.

The resolutions of Congress of March 18, 1784, in relation to it, direct interest to be paid.

It is one of those cases in which interest is allowable, according to the Solicitor's classification filed in another case, and is there mentioned by name. Congress admitted the right in paying one-fourth in 1844, with interest.

JOHNSON & COX, *Attorneys.*

IN THE COURT OF CLAIMS.—No. 167.

ON THE PETITION OF JACOB BIGELOW, ADMINISTRATOR OF FRANCIS CAZEAU, DECEASED.

Brief of the Solicitor of the United States.

This is a claim now for $110,264 02, with interest. It has been once paid in full, and a second time in part. It is founded on the act of 1817, vol. 6, p. 191, appropriating $42,737 93 to the *legal representatives* of Francis Cazeau, *late* merchant at Montreal, or to his or their assignee or attorney, or other person lawfully entitled to receive the same; and the question made by the claimants is, whether three-fourths part of this money which was paid to the attorney in fact of one Francis Corbeaux, to whom so much of it had been assigned, was paid to the person lawfully entitled to receive the same.

A further question will be made by me on the validity of the act of 1817, which opens the case on the

Merits of the original claim.

The claim, as stated in the petition, and as presented in a memorial in 1783, was for three items: 1st. Flour lost by the failure of General

Arnold to invade Canada in 1777. 2d. For three boats and freight captured on Lake Champlain, by the Americans, in the same year. And 3d. For cash advanced during the years 1778–'79 and 1780, to procure intelligence for the American generals.

1. It was alleged by Cazeau that he had bought the wheat and made the flour under a verbal contract with Arnold; and that, by the terms of the contract, it was agreed that the flour should be at the risk of the government.

2. These boats had been loaded with brandy, wines, &c., intended for the Americans, and, it is alleged, were proceeding directly to them when they were captured and made prize.

The consideration of the particular evidence on which these claims were presented in 1836 is preceded, in Mr. Maxcy's report, with considerations of some testimony going to show that Cazeau was a French Canadian of wealth and influence, who, at the breaking out of the American revolution, espoused the cause of the revolted colonies, and maintained a correspondence with the public men and military officers of the revolution during the struggle, was finally suspected and imprisoned by the British, and driven out of the province. There seems to have been a favorable opinion entertained of him by some persons of distinction, and a lively sympathy is manifested for his misfortunes in the proceedings of Congress; but that he performed any real service for Americans, much less that he figured in the affairs of that day, as described in the Senate report of 1817, or even to the extent Maxcy describes, there is no reason for believing. His claims were urged on the Continental Congress without proof, in the same style in which Maxcy advocates them in this part of his report, merely on the character of the individual; and men like Mr. Monroe, who, as is well known, was subject to be imposed on in money matters, whether his own or those of the government, were willing to waive all proof of the facts, and recognize the claims preferred against the government by Cazeau without proof. Not so Robert Morris, the practical man of business, whose position and experience taught him the necessity of abiding by established principles in such affairs, to avoid being made dupes through appeals to their good feelings, and thus sacrificing the public to individuals. Accordingly, he said in his letter of 1784, (see Doc. 5, No. 4, as marked and referred to in Maxcy's report:) "A cursory view of the enclosures contained in this letter will show the probability that Mr. Cazeau's demand is totally unfounded." * * * He then guards Congress against the encouragement of such claims, and says: "I am extremely sorry to give Congress trouble on any occasion, but it is my duty to suggest the danger *of innovating on established rules.* There are in all times and in all countries persons who stand ready to take advantage of the unguarded moments, and procure acts of the sovereign authority injurious to the public good. *The best emotions of the mind by this means become the sources of evil, and pity for one operates injustice to many.*"

But it is alleged in the petition that Mr. Barber, commissioner of accounts for the State of New York, reported afterwards, in July,

1785, in favor of the claim. But the Treasury Board, to whom Barber's report was referred on the 29th of August, 1785, (see No. 5,) say, "that they have maturely considered the report of said commissioner, and do not find the claim of Francis Cazeau supported by any other evidence than his own deposition; although the resolve of March 18, 1784, directs that Mr. Cazeau's testimony, under oath, should be admitted *in support of such evidence as the circumstances of his case required.*" Mr. Maxcy, in commenting on this action of the Treasury Board, (see H. Rep. No. 694, 29th Cong., 1st session, p. 9,) says this declaration demonstrates that the "concurrent testimony" produced before Commissioner Barber was not, from some circumstance not now to be accounted for, referred to the Board of the Treasury with his report," &c.

And it is assumed by Mr. Maxcy that, if the board had had all the testimony before them on which Barber had acted, they would have adopted his conclusion. But this assumption on his part that they had not all the evidence upon which he acted, is wholly unwarranted, and is contradicted by the language above quoted from their report, and would take away all justification for the rebuke they give Barber for having disregarded the resolution of Congress.

Maxcy quotes from Barber's report the words "*concurrent testimony,*" and would convey the idea to one who had not read Barber's report that Cazeau's testimony concurred with some one else, whereas it is the *concurrence or consistency of Cazeau's own statement* of which he speaks.

Barber's report was subject to another exception. The board say that Congress, by resolution of March 18, 1784, "had directed the accounts of said Francis Cazeau to be adjusted by the superintendent of finance; and order having been taken on the same, the reconsideration of these accounts did not come under the cognizance of the commissioner of accounts for the State of New York."

See also No. 7, Doc. 5, which is a report from the same board, composed of Osgood, Livingston, and Lee, dated August 14, 1786, on a petition of Cazeau, dated 10th August, '86, in which they repeat their former report, that they are not furnished with any evidence in support of any part of it.

It thus appears that the superintendent of finance, in 1784, and the Treasury Board, in 1785, and again in 1786, rejected this claim for the want of any evidence to support it; and that Congress reconsidered their resolve of '84, ordering the accounts to be adjusted on 2d February, '86, and disallowed all, save the small items for intelligence; and yet, if the dates are to be credited, the claimant had then in his possession all the essential documents on which Mr. Maxcy demonstrated not only the character and services of Mr. Cazeau, but the *particulars* of his loss.—(See papers marked E, F, G, I, K, M, Q, R, and S.) So that the very evidence which is so convincing to Maxcy, and which, if genuine and reliable, is undoubtedly conclusive, existed prior to all these rejections, and was withheld then and afterwards, although, as we have seen, the claim was rejected by the superintendent of finance and by the Treasury Board, again and again, for the

want of this testimony. It is rendered certain that this testimony was not before them, not only by the reasons which are given in their reports for the disallowance of the claim, after the favorable action on it by the committee, of which Mr. Monroe was chairman, and by Congress, but from the list of papers communicated to Mr. Jefferson, then minister to France, June 4, 1788, under resolution of Congress, to forward to him copies of the papers relating to the Cazeau claim, (see U, No. 4,) where we find what papers and certificates did accompany the memorials, and none of the important papers above noted are included. It is manifest that they had never been filed; and as there is no conceivable reason for procuring them except for presentation to Congress, and as they bear directly on the points on which proof was required by the superintendent and Treasury Board, as shown by Mr. Maxcy, no explanation can be given of the failure to file them, except that they did not exist at the time they purport to be dated.

Mr. Maxcy's failure to note this in his elaborate report, like his observations on Barber's report, and some other more remarkable evidences of his leaning to the claimants, hereafter to be noticed, shows the *animus* with which he entered on the duty committed to him. When and how these papers came into existence, or by whose agency, it is not material to inquire; for even if due to that accomplished person, Mr. Josephus B. Stewart, whose frauds and misrepresentations are so much insisted on by the present claimants, it is nevertheless true that they and Mr. Maxcy gladly avail themselves of his doings and representations, false or otherwise, which go to establish the claim, objecting only to Stewart's appropriating the fruits of his labors.

No one acquainted with men will controvert the soundness of the doctrine laid down by Messrs. Morris, Milligan, and Mercier, in their reports on this claim; nor is it any disparagement to any one who has since been called to pass on the questions of fact on which they acted, to deny to them equal ability for giving a satisfactory judgment.

Maxcy seems to suppose that Morris was influenced in the rejection of the demand by the condition of the treasury, and quotes a letter to show the poverty of the government at that time. But I consider such a suggestion a reflection on Mr. Morris' integrity, which Maxcy ought to have scrupled to make, lest his leaning the other way might be imputed merely to the fact that the government had grown rich in the meantime.

The circumstances to which Morris refers, as showing that this claim was probably unfounded, have never been successfully combatted.

1. Is it at all likely that if Arnold had directed Cazeau to procure provisions, there would have been no one to testify to it but himself? From the description given of Cazeau, and of his intimate relations with our officers in Canada, it seems incredible that he should not have been able to procure proof on this point if it had been true. It is excused on the ground of secrecy to be observed; but the order must have been communicated by some one, or given by Arnold himself; and, besides, Mr. Cazeau would not have been the only person

to whom application would have been made to make such preparations for the return of the American army, because the army would in that case need something besides bread, which was all Cazeau provided.

2. But if Cazeau was a person so trusted, and so deserving of it, why did he waste the means of the country so uselessly, when, as it is shown, all hope of the return of the army was given up before he bought the grain?

3. But the most extraordinary part of the story respecting the flour is, that it spoiled, because the government was so hostile that no one dared to deal with him or work for him. How did it happen that he could get anything sold and delivered, if nobody could be found to take anything away?

As to the boats and their cargo: how can any one believe that they were destined for the Americans, and yet, when in sight and ordered, refuse to come to, and it is not till long afterwards that we hear they were designed for the army of the United States? Strange, that the people in charge of the boats would not say to their friends at the time, "Do not fire on us—we are coming to you;" and that, even when captured, they cannot find words to express this idea, and that they stand by and see their master's goods made prize of among his friends, and do not offer a word of explanation for years afterwards.

The only answer to these facts is found in the general fact that Cazeau was a recognized friend of the Americans, and suffered for it; and it cannot be supposed probable that he would defraud his friends.

I reply, that the nature and extent of his friendship and the value of his services were probably much better known and appreciated in 1786, by the men who participated in the transactions in which he claims part, than they can possibly be known at this day. And it is to be observed, also, that in the account presented to the French government he professes to have been actuated by the design to recover the Canadas for the French monarchy; that he went back to Canada from Paris by direction of M. D. C. Choisueil, minister of foreign affairs, for that purpose, &c., &c.—(See his affidavit, Nov., 1807.)

Men are strangely mixed with good and evil, and we are every day surprised and perplexed by the contradictions this admixture presents in the same character. How forcibly was this exemplified in Arnold himself, with whom this transaction is said to have occurred. When we find that the extraordinary courage, endurance, enterprise, and talent which he exhibited in his country's cause, were combined with passions base enough to induce him to betray that very cause afterwards, we need not be surprised at the exhibition of lesser vices in others who have not exhibited his extraordinary virtues. If it be true, therefore, that Mr. Cazeau was as zealous an American as he is said to have been, it by no means follows that he might not afterwards make unjust demands upon the government, especially when he became necessitous. It is manifest, from the account he rendered, that he had very unreasonable ideas on the subject of the extent of his rights against the United States, and that he did not mince matters in running up the account to $2,801,251 48. Among the charges,

$59,000 for his services as secret agent; then, as colonel in the army, $11,600, (no commission ever having been held;) $352,977 59 for property confiscated, &c.; $296,296 30 for loss of his commercial establishment; $8,888 89 extra expenses, &c.

He must have had a most extensive wardrobe, as he charges for twenty complete suits of clothes, twelve dozen fine linen shirts, &c. He swears to the whole of it.

The act of 1817 *procured by the false report of the Senate committee.*

It is true that Congress in 1817 formed a different opinion upon the subject of Cazeau's claim from the final judgment adopted by the old Congress; but it is also true that the action of the old Congress was not brought to the attention of Congress in 1817. See report of Senate committee, (2d sess., 14 Con., p. 344,) in which the committee say that Cazeau *refused to accept* the amount reported by Barber, "*not understanding the same to be on account,*" *&c.* I believe that if it then had been known that the subject had been up before Congress and their officers thirteen times, (see App. No. 1,) and was rejected, after being before them for three years, the act of 1817 would not have passed.

Fraud vitiates the act.

I think, therefore, that it is shown at least that there is no merit in the original claim, and that the act of 1817 was passed under a gross mistake of facts. But the claimants here admit and insist on the falsehood of many of the statements of the report of the committee under which the act was passed, and I have shown other impositions put on the legislature by the committee, and, together, we make a case of imposture and fraud which, perhaps, the Court may think requires it to hold that act null and void.

Payment.—Was the claim assignable—was it assigned?

But if the law of 1817 be valid, has not the money been paid to the proper parties?

It is argued in the negative by the claimants, as to three-fourths of the amount paid Stewart, on the grounds—

1. That the Cazeau interest in the claim, at the date of the instrument by which it was assigned in part to Corbeaux, was unliquidated, and, therefore, unassignable.

The act itself answers this objection. By that the money is payable to the "representatives of Francis Cazeau, *late* merchant at Montreal, or to *his* or their assignee," &c.

As the act speaks of him as deceased, and yet provides payment to *his* assignee, it must be intended to pay it to one who had such an assignment from him by transfer anterior to the liquidation of the claim.

2. That said instrument was but a power of attorney, and was re-

voked by the death of Cazeau, although it was a power coupled with an interest. I admit that if it be nothing but a power of attorney it was revoked by the death of Cazeau; but I contend that it was a transfer of three-fourths part of the claim, absolutely and indefeasibly, for a consideration expressed to be received by the grantor. That, if possible, this is made plainer by the provisions respecting the revocation of the power given in the same instrument to secure the other fourth part, which is declared revocable only on payment of the penalty of $20,000, and by the collateral instrument executed on the same day, by the second article of which it is provided that such revocations may be made by Cazeau, without subjecting him to the penalty, if the claim be not successfully prosecuted within the two sessions of Congress then next ensuing. It is expressly stipulated in the first article, after providing that the consideration paid should not be recovered, that "the three-fourths interest, granted and transferred by the Sieur Cazeau to the Sieur Corbeaux in the aforesaid credits and claims, are equally, from this moment *and forever, secured by the latter definitively, irrevocably, and likewise in every state of things whatsoever.*

That Mr. Maxcy should have regarded this instrument as conferring upon Cazeau the right to defeat and annul the whole of Corbeaux's interest in the three-fourths, as well as to revoke the power over the other one-fourth, in defiance of its plain language to the contrary, must greatly impair his credit with the Court as an impartial judge in the case.

The United States might object to considering this collateral agreement at all, as one the existence of which they had neither actual nor constructive notice; but, as the paper was intended only to carry out more explicitly the objects of the principal paper, such objections are waived. How any disinterested man could construe it otherwise is unaccountable; for although the second article does give the right to revoke the powers conferred on Corbeaux without subjecting Cazeau to the penalty which the first instrument imposed, this only relates to the interest of Cazeau, and was professedly intended only to provide against injury "*to the Sieur Cazeau, who remains proprietor of one-fourth, which he has reserved to himself in the aforesaid credits.*"

Nor is this all; for, anticipating that it might be held that the interest was unassignable, they stipulated that, nevertheless, this assignment should be obligatory, and Cazeau should pay over Corbeaux's proportion. Whether there was any actual consideration, or whether, as alleged by the present claimants, Cazeau was imposed on, is another question, and is a question of fact, which may admit of discussion; but as to the construction of the written instrument between the parties, it seems to me there can be no dispute. Cazeau's letter to Madame Reeve, (see Appendix, No. 2,) also treats it as making over to Corbeaux three-fourths, to hold as his own property.

As respects the questions of fact, the fraud alleged to have been practiced on Cazeau, and the supposed surrender and annulment of the assignment.

The only testimony offered in the case is *ex parte*. The people charged with fraud are not shown to have heard of the charge, and are not interested in repelling or disproving it.

The two pieces of testimony considered most effective by Mr. Maxcy are those marked A A and B B. A A is said to be a letter from Cazeau himself to Mad. Reeve, (see App. No. 2,) dated in 1808, in which he speaks of Corbeaux as having procured him to assign three-fourths of his claim, and claiming to have paid 1,200,000 frs., without having paid him a sou; and that he had instituted criminal proceedings against him for the purpose of annulling the contract and sending him to the galleys.

Upon what principle is such a paper admissible as testimony? If Cazeau were now alive, his statement could not be received against the acknowledgments of his deed. But, it is said, the circumstances confirm the statement. There is the same objection to the means of proof offered to show these circumstances. Besides, the same imbecility which would enable one man to get his property from him, and acknowledgments of the full payment for it, with the recitals that the money so actually received should not be returned, would enable others to get the money away from him, and leave him in poverty.

A A and B B are relied on, also, to prove judicial proceedings to reclaim the papers; and it is argued that this, with the subsequent possession of the papers, proves the surrender of the papers and the annulment of the assignment. This is a very unwarrantable conclusion. If there had been a judicial annulment, it would undoubtedly have been produced. The possession of the papers argues nothing, for Corbeaux offered, through Mr. Thillé, to permit Mr. Cazeau to repossess the papers in the office of the minister of foreign affairs, if he thought proper to apply for them, but distinctly refused to relinquish his rights under the agreements. If the papers at the office were the originals spoken of, his subsequent possession of them, therefore, clearly argues nothing. But I suspect that few, if any, of the papers were there: because we find this letter of Cazeau's, of 1808, speaks of having then employed General Mason, of Georgetown, in his business, who says, in his letter E E, he was referred to Victor Dupont and to Mr. Duplanty, for the documents in support of the claim; who said, in reply, that the documents were in the hands of Mr. Cazeau's son, in Canada, and the non-reception of them delayed Mason's action till Cazeau died.

But subsequent to the date of this letter informing the grandson of the employment of Mason, viz: on the 20th of December, 1808, we find the original of assignment, which it is supposed in argument was surrendered to be cancelled at the time of the recovery of the original papers, still remained on file in the office of the American consul at Paris. As we see, however, that Mason, who had already been employed, was referred to persons in America for the original papers, it is rendered

certain that such originals were not recovered of Corbeaux, and the probability is, indeed, that these papers had never been in Corbeaux's possession at all, for the same letter of Cazeau to his grandson speaks of his son Charles, who had the papers, as having been his agent previously, and the probability is that these papers were in the hands of Charles, or Dupont, or Duplanty, in America, at the time of the assignment to Corbeaux and afterwards, and the papers which Corbeaux had were, probably, only the copies which were afterwards used by Stewart.

The possession of the other original papers by the claimants does not, therefore, go to show the surrender of the assignment by Corbeaux.

What other evidence is there?

There is no judicial decree or compulsory process. The evidence of Mr. Thillé, adduced by the claimants, which is the latest account we have of the relations between the parties, shows that, whilst Corbeaux offered no objection to Cazeau's possessing himself of certan papers, he adhered to the rights he had acquired by virtue of his agreement with Cazeau. Against this positive assertion of these rights in 1808, and his subsequent assertion of them here before Congress, what evidence is there that he had surrendered them in the intermediate eight years? Nothing but the allegation that the original assignment now produced in court was produced by the present claimant, and the only evidence of this is that Mr. Maxcy says, in his report, that he found nothing but a copy filed in the register's office; and hence, and hence only, it is inferred that the present claimant found the original among Cazeau's papers and produced it. There is no direct evidence that such was the fact; no one proves either the finding of this paper in Cazeau's possession, or the filing of it. Mr. Maxcy does not say, as I understand his report, that this original paper accompanied the memorial of the present claimant. The paper Y, of which he speaks as accompanying the memorial, is a copy. But, if he should be supposed to intend to say that the original accompanied the memorial, how does he know the facts of which he speaks? How can he know it? The memorial itself, and all the papers, were withdrawn by the claimant from the files of Congress, (see Dicken's statement,) and it is now presented in evidence to enable us to see either the ground on which relief was prayed, or the exhibits and proofs presented.

If it be admitted, however, that this identical paper was presented by these claimants, and the inference adopted that it was obtained from Cazeau's papers, does it follow that it was obtained by him from Corbeaux, or that it was surrendered by Corbeaux as a surrender of his rights?

It must be assumed, in order to this reasoning, that this paper was the *only original* executed between the parties, and that Corbeaux was the depositary of it.

Against the first assumption we have the language of the instrument itself, that it was "an agreement indented *of two parts*," to which the parties had "*interchangeably affixed their hands and seals;*" also the nature of the instrument which created such mutual obligations

as to require it to be interchangeably signed and executed, thus showing, by its terms and by its nature, that it was probably executed in *duplicate*. If this should be the construction and conclusion adopted by the Court, of course the production of one original by the claimant argues nothing; he was entitled to one, the other party was entitled to the other, and may have it now in his possession.

It does not follow, by any means, that it is not and was not in his possession because it is not now found in the Treasury Department. By what law, or by what legal reasoning, is it assumed that the Treasury Department is the permanent depository of the original papers of Frenchmen, necessary to be used in France to determine the rights of individuals between themselves. The circumstance that the same instrument contained a power of attorney from one to the other to transact business with a third person, would not make such third person the legal custodian of the paper, nor would the absence of it from his vouchers, and the presence of a copy, prove or raise the presumption that the original had not been presented. The natural course of business in such a case between business men would be marked by precisely the evidence we have here. The original of such a paper required to be used elsewhere would not be left as a voucher on settlement with a third person; such third person would have no right to demand the surrender of the original paper; all that could be required in reason would be, to be furnished with an authentic copy of the paper.

If, on the other hand, the Court should be of opinion that the paper was not executed in duplicate, the possession of it by Cazeau's administrators does not imply the surrender or abandonment by Corbeaux of his rights under it, because—

1. Considered as the only original, in connexion with the fact in proof that it remained on deposit at the consul's office in Paris more than a year after it was executed and delivered, it is probable that the office was made the depository of the original.

2. It is never shown to have been in the actual possession of Corbeaux, for although its formal delivery is attested so as to give legal effect to its provisions, it is certified more than a year afterwards that the copy given to Corbeaux was a true copy of the original which remained on deposit in the office of the consul. Why should Corbeaux want a copy if he had the original, or had a right to the possession of it, and could have had it for the asking?

It is said, indeed, that the consul certifies what was not true, in certifying that this was a copy of the *original;* and perhaps it will be urged that he supposed his record was, like that of a notary, the original. But the language used by him does not admit of this construction; he speaks of the original *instrument*, first, as being *deposited*, and then of it as being registered at a date long subsequent to the date of its execution.

Nor is there any reason for supposing it to have been deposited subsequent to the date of its execution and delivery. The fact that a dispute had arisen within five months afterwards between the parties; that the power of attorney had been revoked, and that at

the date of the copy of Cazeau's letter, which was 30th November, 1808, it was at its hottest, repels altogether the presumption that Corbeaux would have put the original paper out of his power, if he then had it in his power. Under such circumstances, when the fact alone appears that a paper affecting the rights of two persons, which was deposited at the consul's office, is found in the possession of one of them, is it to be inferred that the other either consented to the surrender of the paper or abandoned his rights under it?

Can a case be shown, under any system of law, where a party having divested himself of his rights by a sealed and recorded instrument, is held to have reinvested himself in them by merely getting possession of the original deed? It is said the possession argues either that the paper was not delivered, or that it was reacquired fairly. In this case it is attested on the face of the instrument that it was formally delivered, so as to give effect to it; and we have seen that it was deposited with the consul. Under what circumstances, and at what time, and by whom it was obtained from that officer; whether by Cazeau or some other person; whether before Cazeau's death or since; whether before the act of 1817 was passed, and the money paid on it, or since, is not shown; and no circumstance is offered in evidence from which either the time, the manner, or the person can be inferred. It is shown, however, that immediately after Stewart obtained payment of the money, in 1817, the fact became known to the claimants, one of whom came to Washington, and went thence to Paris. As the whole case, so far as the three-fourths is concerned, depended on showing the actual annulment of the agreement between Cazeau and Corbeaux prior to the payment to Stewart, and as the transaction was then recent, it might be expected that some direct evidence would be produced. The papers on file in the treasury showed that when Corbeaux got the copy of his power, the original was on file at the office of the consul at Paris. If the original continued on file in that office, and was then delivered up to Reeves, such delivery would not avail. If it had been delivered up previously to Cazeau by the consent of Corbeaux, there would probably be some written evidence of that consent preserved in the office, or some one in the office who could testify to a fact then recent. The time of the delivery is therefore as material as the delivery itself, and there is no reason for presuming that the time was prior to Cazeau's death rather than afterwards. This is fatal to the claim, on the doctrine of presumption.—(See Cowen and Hill's Notes, part 1, p. 469.) Indeed, there is more reason for supposing it surrendered afterwards than previously, if the consent of Corbeaux is to be assumed; for, to the last accounts we have of Corbeaux disposition in the matter during Cazeau's life, we find him persistent in the assertion of his rights under the agreement. But, as it would not interfere with him in any way for the Cazeau heirs to get the money paid to them, if they could, by merely having the possession of this paper, it is quite consistent with the character the claimants give of him and of his accomplished agent, Mr. Joseph B. Stewart, that they should then agree to let Mr. Bigelow have the use of it.

No argument can be drawn from the possession of the paper.

This deed was an *agreement* between the parties "interchangeably executed," and was the evidence as well of Cazeau's rights as of Corbeaux's, and there is no reason why Corbeaux should have had exclusive possession of it, and no argument, therefore, can be drawn from Cazeau's possession.

The attempt to show an official surrender of the assignment by a false translation.

Another attempt to show that the assignment was received from Corbeaux judicially, or at least to show its surrender through official hands, is based on the paper A A; the letter of Cazeau of November 30, 1808, and the receipt of Thillé attached.—(For correct translation, see App. No. 2.)

Only a part of Cazeau's letter is translated by the claimant, or by Maxcy, and Thillé's receipt is grossly mis-translated to support the argument.

The Court will observe that that part of the letter of which the translation is found among the papers, speaks of the institution of proceedings against Corbeaux. The receipt, as translated, appears to be: 1. For the price of drawing the revocation of the power to Corbeaux; 2. The denunciation of it (the acknowledgment?) to the notary; 3. A summons. And concludes with this language: "I authorize and request Mr. Lebon, advocate, to whom I have remitted these acts with the expedition of a power of attorney given by Mr. Cazeau to Corbeaux, to return them to the bearer of this receipt, at Paris, January 26, 1809."

The latter part of this is interpreted to be an order on Lebon, in favor of the bearer, Cazeau, for the revocation, &c., *and the power of attorney from Cazeau to Corbeaux!*

The true translation of the last clause in this paper is as follows: "3. A citation to Mr. Corbeaux, dated 2d May following, by virtue of which I authorize and request Mr. Lebon, advocate, to whom I have passed these instruments, *on the 22d July last, with a copy* of the power of attorney executed by Mr. Cazeau to Corbeaux, that he (Mr. Lebon) will be pleased to have them delivered *to the doorkeeper of the prefect,*" at Paris, &c.—(See App. No. 2.)

The difference is obvious, and the object is shown by the argument attempted to be drawn from the paper. But when the date at which these papers were delivered to Lebon is put in—(it is omitted altogether in claimant's translation)—22d July, 1808—and it appears that it was *a copy* of the power of attorney which was to be delivered by Lebon to the prefect, and not the original—*the expedition* of which to Mr. Cazeau was committed to him according to the claimant's translation—it is manifest the receipt relates to transactions anterior to the letter, at the date of which their difficulty was unsettled. A copy, to, and not the original, is to be delivered, and delivered to the pre-

fect, not to Cazeau; and so we find these are but the preliminaries of litigation, and not results; preliminaries, too, which authorize the presumption that an authentic record exists of some judicial proceedings on the subject, and the failure to produce that record authorizes the presumption that its production would not be favorable to a party who seeks to substitute presumptions for it.

Effect of the rule against secondary evidence on the claimant's case, and his effort to avoid it considered.

It is illegal for the government to pay the *first* time, according to the claimant's logic, on any but the best evidence that an assignment was made; but it is permissible to pay *a second time* to one who claims that the assignment was annulled and invalid at the time of the first payment, upon the most shadowy evidence of such annulment—upon no clear evidence, indeed, of any single fact on which to raise the slightest presumption that such annulment had ever taken place.

True, an effort is made to escape from this dilemma by a sort of plea of offset, that as the United States committed an error in permitting secondary evidence, the claimants ought to be permitted to recover without any evidence at all but merely on their own statement.

This is, in substance, the ground taken in the brief, where it says the claimant only admits that the copy on which the government paid was a true copy, coupled with *the statement that the assignment was null.* Who asked him to admit anything about it? If he had chosen to bring us into court, and put us to the proof to show payment of the money, if we could not have produced the original, we should have offered the copy. If objected to and ruled out, we would have shown the loss of the original, or that it was not within our control, and so laid the foundation for letting in the copy to prove the fact that the interest was assigned to the man whose receipt we held. This would satisfy the strictest rules of practice. It is of no moment whether there was any power of attorney, copy, or original presented, or receipt taken when the payment was made, or whether the proper basis was then laid for the admission of secondary evidence or not. It suffices if we show a proper receipt and power at the trial, and a copy would then be admissible if we had not then in our possession or control the original.

But if we had to depend altogether on the claimant's admission, with his statement annexed, the rule does not require that the *statement annexed* shall *be believed.* The rule requires only that such statements shall also be admitted in evidence. The Court is only bound to *hear* the statement of fact which the claimant makes in such connexion, and is not bound to believe it; and is still less bound to adopt the legal opinions based on the fact so stated.

The statement of fact, touching the supposed annulment which accompanies the admission that the copy is genuine, is merely that Cazeau died in posession of the original paper. That it had been actually annulled or cancelled is not stated as a fact by the claimant,

but is merely matter of inference from this fact, and the documents and papers before the court.

But assuming all the facts alleged to be proved, the claim has no merit legally or equitably.

The claim, with this admission, depends upon showing that money was unlawfully paid out of the treasury to one whose authority to receive it was shown by an authentic copy of a sufficient assignment. This proposition is supposed to be demonstrated by showing that such an instrument would be inadmissible testimony in courts of justice. If this reasoning be conclusive, it may be demonstrated that there never was a lawful payment at the treasury; for in no case is the evidence required there to obtain payment the same required in courts to obtain judgment; such a requirement would render it impracticable to transact the business of the government; for, in addition to requiring in all cases the production of original instruments, such instruments must be proved by the subscribing witnesses. Thus, in the case before us, if the original instrument had been produced, it could have been maintained with equal reason that the payment was illegal, unless the execution of the instrument had been proved by the subscribing witnesses, or without proof of the identity of the person, &c., &c. The certificate of the counsel would prove nothing in a court of justice, as there is no law authorizing him to take any one's acknowledgment of a deed; and the act of April 14, 1792, vol. 1, p. 254, only authorizes the taking of protests or declarations of citizens of the United States, and these persons were not citizens.

There being no statutory law regulating the evidence upon which such payments are to be made, and the reasoning drawn from the requirements of courts at trials being inapplicable to these transactions of business in the department, and such requirements, in fact, being both unusual and impossible, there can be no pretence for saying that the payment was illegal in any sense.

But it may be said that there was no statute law violated by the officers in making the payment in question, and admitted that neither the government nor individuals could be expected to conduct their ordinary business on the rules of evidence required in courts, yet that neither the government nor individuals were required to be expressly notified that an agent has been superseded, or that an assignment has been invalidated, if any circumstances are made known to the paying party which would put a man of ordinary prudence on his guard, and induce inquiry in the proper quarter as to the real state of the business between the claimants.

Was there, then, anything in the circumstances of this case to put a careful officer on his guard, or from which it could be inferred that there was anything wrong, or notice be implied not to pay the three-fourths over to the agent of Corbeaux?

Stewart, to whom the money was paid, it seems, had been chancellor in the consulate at London under Colonel Aspinwall, and, as Aspinwall testifies, had borne an uninpeached character, and he ex-

pressed great surprise when he was afterwards told that he had acted dishonestly.

He presented as his authority a copy of an instrument acknowledged before the consul at Paris. It was but a copy, it is true, but it was a copy certified by the consul, who at the same time certified that the original remained on deposit in his office.

In the absence of any statutory rule requiring the production of the original paper, is there any reason to distinguish between the credit to be given to a paper which you are convinced is a faithful copy and the original? It is true that there is another link in the chain of proof, and therefore, philosophically speaking, the evidence is weaker. But in a case like this, where a paper is produced as a voucher against the government, and it is certified to be a copy by one of its own officers of an original deposited in his office, and so is, in fact, in the possession of the government, would there be actually any appreciable difference between the effect produced on the mind by a copy so authenticated and by the original? Practically, there would be no difference; and this is so true that in many of the States—in Missouri, for instance—the common law rule requiring the production of the original is abandoned in the case of recorded instruments, certified copies from the record being admissible in evidence with like effect as originals. And what reason is there for requiring the observance of the common law rule in the Treasury Department, in preference to the Missouri rule? One is just as obligatory on it as the other, as law. Both are open to selection by the officers, as convenience and reason shall recommend them.

Under such circumstances, if under any, the officers would be justified in paying to an assignee.

Nor is the fact that eight or nine years elapsed before the passage of the law, after the copy was obtained, a fact suggestive of suspicion. The natural and legal presumption would be, that the original continued on deposit with the consul, and that the assignment was unquestioned, unless those who were interested to question it made known their objections.

The fact that Stewart did not move in the matter at all before Congress till the session of 1816–'17 would not be noticed at the treasury; nor the character of the testimony, or representations used by him before Congress to obtain the passage of the act. These might be important if the present claimants proposed to set aside the act; but as they are not solicitous for that, but propose only to draw in question the action under it, the testimony used in procuring the act, and the time and manner at which it was procured, are not of any moment here.

But if the attention of the officers had been drawn to the delay of Corbeaux in thus acting on his assignment, any presumption against its validity, arising from his failure to present the claim sooner, would be rebutted by the fact that no one else appeared to assert any right to it till many months after the passage of the act and payment of the money under it.

Laches are not imputable to the officers of the government, 9 Wheat.

720. In this matter these claimants, it appears by Cazeau's letter, neglected him, and the claim, too, while it was his, and until Stewart had been successful with it. He says, in the letter of November 30, 1808, that he had not heard from any of them in three years; that Charles had advanced him nothing; that in his poverty and sickness he had to depend on strangers, and that he was forced to get strangers to attend to his affairs; nor was this because they were not persons capable of looking after such things, as is manifest from the fact that some of them are merchants and business men, (see Cazeau's letter,) and from the diligence and success with which they have had them attended to since.

M. BLAIR.

APPENDIX.—No. 1.

Statement of proceedings on Cazeau's claim, and their several dates.

1783.—A committee report favorably on the claim.

Feb. 6, 1783.—Report referred to the superintendent of finance "to take order."

Jan. 26, 1784.—A committee report favorably, and propose seven resolutions.

March 4, 1784.—The above assigned for consideration on the 18th.

March 18, 1784.—The report and resolutions passed.

April 1, 1784.—The Auditor makes his report to the Comptroller, stating that no proof is offered to support the account.

April 8, 1784.—The Comptroller adopts the views of the Auditor, and enlarges on them in a letter to the superintendent of finance.

April 13, 1784.—The superintendent concurs in the views of these officers, and transmits their reports to Congress.

May 6, 1785.—A committee of Congress recommend a repeal of the resolves of 18th March, 1784, which is referred to the board of treasury.

June, 1785.—The resolution passes directing the commissioners for settling accounts of the State of New York with the United States to examine the accounts of such Canadian refugees as have furnished the late armies with any sort of supplies, and report thereon to Congress.

July 27, 1785.—William Barber reports to Congress his settlement of Cazeau's claim under this resolve.

August 29, 1785.—The board of treasury report, repealing the resolutions of 18th March, 1784, excepting that relating to expresses.

Feb. 2, 1786.—The repealing resolution passed, according to the report of the treasury board,

No. 2.

APRIL 24.

DEAR SIR: Enclosed you will find a translation of Cazeau's letter and the receipt attached to it, and the originals.

Yours, &c., &c.,

J. C. PICKETT.

M. BLAIR, Esq.

[Duplicate.]

PARIS, *November* 30, 1808.

I have not heard anything from you, my dear children, for three years. What are you thinking about? Both your duty and your interests require that you should watch more carefully over my life. I have not yet finished my business. During nine years that Charles has been acting as my agent and attorney, he has advanced nothing, and I am obliged to have recourse to strangers to superintend my affairs. Consequently, I have authorized General Mason, of Georgetown, to attend to the adjustment of my claims before Congress, which do not amount to less than three millions of dollars, with interest on the whole. And with the view of hastening an adjustment, I have empowered *Mons. Orthling—rue de la Magdelene, Fauxbourg Honoré, No. 14—to attend to my affairs. He will make all the necessary advances. He has great resources of fortune, and others that I do not (cannot) name. I wish him to make me an advance of money, but I do not know whether he will do so until he gets my power of attorney. Just now, upon my recovery from a very dangerous illness, which has lasted nearly two years, I find myself in very straitened circumstances. I have had intermittent fever, jaundice, and dropsy for eighteen months, and had become so weak that it was necessary to have two persons constantly with me, and they never abandoned me. It was not so, however, with the physicians. Two of them deserted me, and the third has cured me. I owe a large compensation to those who have attended me and have made the advances I needed.

At present I am tolerably well, but it is important that I should take good care of myself. I think of going to the country next spring for a change of air.

A year ago I gave a power of attorney to a certain Francis Corbeaux. He wrote it himself, and in such a way that he has got possession of three-fourths of my fortune, by practicing a deception on me. Judging him by his actions, I believe him to be one of the worst and most dangerous men in Paris. I have brought him before the criminal court. The case has not yet been decided. My witnesses will be examined whenever they shall be required to be. He makes it appear that he has paid me 1,200,000 francs, although I have not received from him a single sou, which I can prove; and the consequence will be,

* Likewise Francis.

that my authority to him will be annulled, and he will be condemned to the galleys. I will inform you of what takes place.

How are my dear grandchildren? Let me hear from them, and what progress they are making in their education. And, as regards those engaged in commerce, I regret that it has not been in my power sooner to assist them. I do not know the names of Cazeau's children, but they are equally dear to me. It would be a great happiness for me if I could have the pleasure of seeing them. Embrace them all for me.

Give me some news of our friends on the river St. Pierre and——[Some of the words being hidden by the wafer, the rest of the sentence cannot well be made out. It is of no consequence, however, being merely inquiries about friends.]

May you all enjoy health and prosperity. I am and will ever be your tender and affectionate father. I embrace you.

FR'S CAZEAU.

Let me hear from you all in a letter.

Address—Rue de Verneuil, No. 21, Fauxbourg St. Germain.

Translation of the paper attached to M. Cazeau's letter.

I have received of Monsieur Cazeau the sum of thirteen francs 49 centimes, ($2 65,) for the following instruments (actes) prepared at his request, to wit: the 1st, containing a revocation of the power of attorney executed by him to Mr. Corbeaux, the 19th of April, 1808; 2d, the denunciation of the latter to the notary, dated the 22d of the same month; and, 3d, a citation to M. Corbeaux, dated the 2d of the May following, by virtue of which I authorize and request Monsieur Lebon, advocate, to whom I have passed these instruments, on the 26th of July last, with a copy of the power of attorney executed by Mr. Cazeau to Corbeaux—that he (M. Lebon) will be pleased to have them delivered to the doorkeeper of the prefect. At Paris, this 26th of January, 1809.

MRE. THILLE.

The letter is addressed to Madame John Reeves, merchant, Fauxbourg St. Lawrence, Montreal, Canada, *via* New York.

IN THE COURT OF CLAIMS.

ON REARGUMENT OF THE PETITION OF THE REPRESENTATIVES OF FRANCIS CAZEAU, DECEASED.

Brief of United States Solicitor.

The claim is that the deceased was defrauded of his rights against the government by one Corbeaux, to whom three-fourths of it was as-

signed, but that the assignment was cancelled before the money was paid by the government, although without any notice that such cancellation had taken place; but as the government paid on a *copy* of the assignment, there was an irregularity for which the government should be deemed to have had notice of the cancellation.

Now, if we assume, for the sake of argument, the fact, of which there is not a tittle of proof, that such cancellation took place, and, 2d, that the payment on a copy was in itself an irregularity, there is not the least logical connexion between the premises and the conclusion sought to be drawn from them. No laches can be imputed to the public. 4 Mass., 522; 3 Serg. & R., 291; 4 Henn & M., 57; 1 Penn. R., 476.

JACOB BIGELOW, ADM'R OF FRANCIS CAZEAU, *vs.* THE UNITED STATES.

Judge BLACKFORD'S opinion.

The following appears to be the history of this case:

The intestate, Francis Cazeau, had certain claims against the United States, which accrued during the war of the revolution. On the 30th of November, 1807, at the city of Paris, the following agreement respecting said claims was entered into between said Cazeau and one Francis Corbeaux:

"Whereas Francis Cazeau, formerly of the city of Montreal, in the province of Canada, merchant, now of the city of Paris, hath just and considerable claims upon and against the government of the United States of America, which claims consist of the following items, to wit: First, the amount of supplies for the American army and other disbursements stated in a certain account settled and approved by William Barber, esq., the commissioner appointed on the part of Congress, as appears by his report thereon bearing date the twenty-seventh day of July, in the year one thousand seven hundred and eighty-five. Secondly, for moneys actually advanced during the seven years of the independence war, from the year one thousand seven hundred and seventy-five to the year one thousand seven hundred and eighty-two, inclusively, which advances were by the said Francis Cazeau made in his capacity as a political and secret agent, appointed and authorized by the American and French governments. Thirdly, for losses which the said Francis Cazeau did actually sustain, both by the confiscating and plundering of his estate, effects, and other property, by the British, in consequence of the active part he had taken in the political affairs of the United States during the independence war; which he did at the pressing solicitation of the American and French governments, and under the solemn promise that said governments would fully compensate and indemnify him, the said Francis Cazeau, for the loss of the property alluded to. Fourthly, for an indemnity due to the said Francis Cazeau, on account of the utter dissolution and ruin of his commercial establishments and very extensive line of business and industry, this loss be-

ing also the result of the said Francis' proscription by the British government, owing to the services he had rendered to the United States. Fifthly, the said Francis Cazeau's pay as a commissioned colonel in the American army during seven years, to which must be added both the allowance of five years' pension and the grant of lands made by law to officers of the said rank. Sixthly, the amount of the unavoidable expense which the said Francis Cazeau hath, during these four and twenty years past, been put to in the lawful though hitherto unsuccessful prosecution of his just claims upon the government of the United States. Seventhly, the amount of interest upon the advances above mentioned and other sums withheld from him by the said government, which interest is calculated from the day the above items became due, respectively, down to the thirty-first day of December next, and at the rate of six per centum per annum, being the legal rate in the United States; the whole of which items amount to the sum of two millions eight hundred and one thousand two hundred and fifty-one dollars forty eight cents, lawful money of the United States of America; equal to fifteen millions one hundred and twenty-six thousand seven hundred and fifty-eight livres tournois, or to fourteen millions nine hundred and forty thousand seven francs and ninety centimes, the present money of France; as will more fully appear by a certain schedule, being a detailed statement and account of the said claims, certified, sworn to, and subscribed, on the day of the date hereof, by the said Francis Cazeau; and whereas the said Francis Cazeau did never, either by himself or by any one acting for him, or under his authorization, receive either from the government of France or from that of America, any kind of payment or satisfaction whatever, so that he remains to this day a lawful creditor of the government of the United States to the above mentioned full amount of two millions eight hundred and one thousand two hundred and fifty-one dollars forty-eight cents, including the interest up to the close of the present year, as aforesaid; and whereas, by the last accounts the said Francis has received upon that subject, it appears that the Congress of the United States did, on or about the ninth of April, in the year one thousand eight hundred and two, come to a resolution, the purport of which was to adjourn the claim of the said Francis, relative to the said demands, unto the third Monday in the month of November then ensuing, for further consideration; since which information the said Francis, owing, without doubt, to the difficulties of the maritime war, has heard no more about his claims aforesaid; and whereas the said Francis' unfavorable circumstances make it a material object for him to have so valuable and just a claim properly managed and attended to, and inasmuch as his old age and bad state of health make it impracticable for him to attend personally to the same: Now, this agreement, indented of two parts, made and concluded between the said Francis Cazeau on the one part, and Francis Corbeaux, junior, of the city of Paris, gentleman, on the other part, witnesseth, that for and in consideration of the sum of one million and two hundred thousand francs unto him, the said Francis Cazeau, well and truly in hand paid by the said Francis

Corbeaux, junior, previous to and before the sealing and delivering of these presents, the receipt whereof the said Francis Cazeau doth hereby acknowledge, and thereof and therefrom doth acquit and discharge the said Francis Corbeaux, junior, his heirs, executors, administrators, and assigns, and every one of them, by these presents, as well as from various other good causes and reasons him, Francis Cazeau, thereunto moving, he, the said Francis Cazeau, hath conveyed, sold, bargained, set over, and assigned, as he doth hereby convey, sell, bargain, set over, and assign unto the said Francis Corbeaux, junior, his heirs, executors, administrators, or assigns forever, three full quarter parts of the whole of the above recited claims or demands upon the said government of the United States of America, amounting, as aforesaid, to the whole sum of two millions eight hundred and one thousand two hundred and fifty-one dollars, forty-eight cents, the interest thereon up to the close of the present year being therein included, and generally, three full quarter parts of all and every the right, title, interest, use, possession, claim, and demand, whatsoever, which he, the said Francis Cazeau, now hath, or may or in anywise ought to have, of, in, or unto or for the above recited demands or claims upon or against the said government of the United States of America, their officers, citizens, and territories; the meaning and intention of the said Francis Cazeau being hereby to assign, convey, and set over, unto the said Francis Corbeaux, junior, his heirs, executors, administrators, and assigns, three full quarter parts of all claims and demands he, the said Francis Cazeau, may or ought to have upon and against the United States of America, or of what may be recovered thereon, now excepted and reserved; to have and to hold the said three full quarter parts, together with the interest that may accrue thereon, and everything incident thereto, unto the said Francis Corbeaux, junior, his heirs, executors, administrators, and assigns forever, as their lawful due and property, and for their sole use and benefit; and it is further agreed between the parties to these presents, that the said three full quarter parts so conveyed and assigned shall be so understood as to be three quarter parts of what may be recovered from the said government of the United States of America, be the same more or less than the three quarters of the above-mentioned sum of two millions eight hundred and one thousand two hundred and fifty-one dollars forty-eight cents; the stating of said sum being intended only as an estimate, and not to operate against either of the parties, so that none shall have any kind of recourse or remedy against the other, should the full amount recovered be more or less than the stated sum of two millions eight hundred and one thousand two hundred and fifty-one dollars forty-eight cents, or should nothing be recovered at all, the true intent and meaning of these presents being that the said Francis Corbeaux, junior, his heirs, executors, administrators, and assigns, shall be entitled to or receive only three full quarter parts of what shall be recovered from the government aforesaid; and it is further agreed between the parties, that the better to insure the settlement and recovery of said claims, the said *Francis Corbeaux*, junior, shall be fully and irrevocably empowered

to act both in his own behalf, and in behalf of the said Francis Cazeau, his heirs, executors, administrators, and assigns; wherefore he, the said Francis Cazeau, for himself, his heirs, executors, administrators and assigns, hath made, constituted, and appointed, as he doth hereby make, constitute, and appoint, the said Francis Corbeaux, junior, his heirs, executors, administrators, and assigns, to be his true attorney or attorneys, irrevocable as far as regards the three quarter parts hereby assigned for him, the said Francis Cazeau, for his use and benefit, in his name and behalf, as far as regards the one quarter part of said claims not assigned and conveyed by these presents, and as to what regards the said three full quarter parts presently assigned and conveyed, for the proper use and benefit of himself, the said Francis Corbeaux, junior, his heirs, executors, administrators, and assigns, to ask, demand, sue for, and by all lawful ways and means recover and receive, of and from the United States of America, their government and officers, of and from whomsoever it may appertain, all such sum or sums of money or other effects of any nature whatsoever, as may be due, owing, payable, detained from or belonging to the said Francis Cazeau, for the whole or any of the above recited reasons and motives; and to that end, with whomsoever it doth, shall or may concern, to account and to view, state, settle and adjust all and every account and accounts respecting the premises, and the balance or balances to receive, and upon the recovery and receipt thereof, in due form of law to execute and deliver requisite and sufficient receipts, releases, and acquittances; also to sell, assign, and transfer unto any person or persons the whole or any part of such estates, public stocks, or other effects as may be given in payment for the whole or for part of the demands aforesaid, and for that purpose to make, seal, and execute all necessary deeds, conveyances, acts of assignment and transfer, or any other instruments that may be relative thereto, endorse all notes of hand and bills of exchange drawn to the order of the said Francis Cazeau; also, if need be, to appear before all judges and justices in any court or courts of law or equity, or other competent tribunal or tribunals whatsoever and wheresoever, there to do, say, pursue, implead, give in memorials and petitions, arrest, attach, and prosecute, as occasion shall be or require; also to compound, compromise, conclude, and agree for the same by arbitration or otherwise, as shall be thought fit and most beneficial, with power also of substitution and revocation, and generally in and about the premises to do, execute, and perform all and whatsoever shall be needful and requisite, as fully, absolutely and effectually, to all intents and purposes, as the said Francis Cazeau might or could do by being personally present, and to have done the same; hereby allowing, ratifying and confirming all and whatsoever shall or may be lawfully done by virtue hereof; and it is further agreed by and between the parties to these presents, that in case the payment to be made by the United States of America should take place partly in specie, and the surplus in real estates, stocks, or other effects, the said three quarter parts hereby assigned and conveyed shall be taken proportionately upon every article or kind of payment so received, so that the assignor and assignee shall

therein share according to their respective interest in the whole claim or demand; and inasmuch as the joint prosecution of said respective interests may be necessary or useful to the recovering of the part hereby assigned, it is further agreed between the said parties that in case the said Francis Cazeau, his heirs, executors, administrators, or assigns, should at any time previous to the settlement and recovery of the claims alluded to revoke or annul the whole or part of the above granted powers relative to his interest not assigned by these presents, then, and in consideration of the above, the said Francis Cazeau, his heirs, executors, administrators, and assigns shall, for so doing, forfeit a penalty of twenty thousand dollars, money of the United States, to the said Francis Corbeaux, junior, his heirs, executors, administrators, and assigns, to be by them levied and recovered by way of execution or other lawful ways; provided, nevertheless, that in case the said revocation of powers should take place, and it were impracticable for the said Francis Corbeaux, junior, to prosecute separately for the interest hereby assigned unto him, so as to have the whole claimed and recovered by the said Francis Cazeau or those acting under him, then the said Francis Cazeau, his heirs, executors, administrators, or assigns, shall be, as they are hereby, held and bound unto the said Francis Corbeaux, junior, his heirs, executors, administrators, or assigns, to account for the said three full quarter parts hereby assigned of whatever shall or may be recovered upon the claims and demands aforesaid, either directly or indirectly, in the same kinds and effects proportionately as may be received, which three quarter parts the said Francis Cazeau hereby binds himself, his heirs, executors, administrators, and assigns, in the said case, to pay or cause to be paid on demand unto the said Francis Corbeaux, junior, his heirs, executors, administrators, and assigns; and it is further agreed between the parties that the said Francis Corbeaux, junior, shall alone bear the whole charges and expenses relative to the joint prosecution of said claims, so that the said Francis Cazeau, his heirs, executors, administrators, and assigns, shall be entitled to and actually receive the one quarter part hereby reserved clear of all the said expenses and charges; provided, nevertheless, and it is hereby agreed between the parties, that the said Francis Corbeaux, junior, shall have it in his power, and is hereby authorized, in order to effect said prosecution, to employ and resort to such means as he may think useful and proper, none excepted or reserved, without it being in the said Francis Cazeau's power to prevent, impede, or disapprove of the use of said means when fairly resorted to or employed, whatever the result of the same, contrary to the said Francis Corbeaux, junior's, meaning and expectation, might be. Finally, it is hereby averred and declared by the said Francis Cazeau, that he hath, either by himself or by any other person or persons acting under him, or by virtue of his authorization, never done, suffered, authorized, or attempted any matter of act, confession, instrument, or proceeding whatsoever, by which the whole or any part of the above mentioned claims, and specially the share thereof hereby assigned and conveyed, might be impeded, objected to, rejected, defeated, or debarred; and the said Francis

Cazeau further covenants, promises, and binds himself, his heirs executors administrators, and assigns, unto the said Francis Corbeaux, junior, his heirs, executors, administrators, and assigns, by these presents, that neither he nor they nor any of them shall ever do, suffer, authorize, or attempt any act that may tend to the same effect.

"In testimony of the whole of which, the said Francis Cazeau and Francis Corbeaux, junior, have hereunto interchangeably affixed their hands and seals, in the city of Paris, on the thirtieth day of November, in the year of our Lord one thousand eight hundred and seven.

"Executed, sealed, and delivered in the presence of us,

"SIM. CARMICHAEL,
"N. M. DELAGRANGE,
"FRS. CAZEAU, [SEAL.]
"FRAS. CORBEAUX, Jr. [SEAL.]"

"Be it known that on the thirtieth day of November, in the year of our Lord one thousand eight hundred and seven, and of the American Independence the thirty-second, before me, Fulwar Skipwith, commercial agent of the United States of America at Paris, and agent for prize causes, personally came and appeared Francis Cazeau, formerly of the city of Montreal, in the province of Canada, merchant, now of the city of Paris, and Francis Corbeaux, junior, of the same city, gentleman, who did respectively acknowledge the above instrument to be their free act and deed, and severally executed it as such in my presence and that of the above written witnesses.

"In testimony whereof, I have hereunto set my hand and affixed my seal of office at Paris, aforesaid, on the day and year first above written.

"FULWAR SKIPWITH. [SEAL.]"

Immediately after the execution of said agreement, and on the same day, the parties executed another agreement as follows:

"We, the undersigned, Francis Cazeau, of the one part, and Francis Corbeaux, junior, of the other part:

"In pursuance of an act, under private signature, passed between us this day, making cession and transfer, by the said Sieur Cazeau, to the said Sieur Corbeaux, of three-quarters interest in the credits and claims of the former upon the government of the United States of America; this transfer being made for the gross purchase money of twelve hundred thousand francs, which have been paid to the said Sieur Cazeau by the said Sieur Corbeaux; and, furthermore, under the other conditions which are expressed in the said act.

"To the end that all difficulties and controversies for the future may be prevented whether between the said parties or between one or other of them and the heirs or assigns of the other; or finally, between the heirs or assigns of the one and the other party respectively—difficulties which may arise from a false interpretation of their contract, or of some one of its clauses, the said parties have judged it proper to explain more particularly, by the present writing, their will, and their reciprocal intentions, and consequently they have agreed further as follows:

"1st. It is expressly agreed that in no possible case, nor under any pretext whatsoever, may either the one or the other of the parties to the aforesaid contract claim to annul it; that is to say, that, on the one hand, whatever may be the event or the success of the claims of the Sieur Cazeau upon the government of the United States, or whatever may be the incidental circumstances which may supervene relatively to this object, neither the Sieur Corbeaux nor his heirs or assigns may claim the restitution of the sum of twelve hundred thousand francs, which have been by him paid to the said Sieur Cazeau for the price of the cession and transfer in question, nor of any part of that sum. The whole of which is received from this moment forever and definitively by the said Sieur Cazeau, in every state of things whatsoever. And that, on the other hand, the three-quarters interest granted and transferred by the Sieur Cazeau to the Sieur Corbeaux in the aforesaid credits and claims, are equally from this moment and forever received by the latter, definitively, irrevocably, and likewise in every state of things whatsoever.

"2d. For as much as if the full powers conferred by the said Sieur Cazeau upon the said Sieur Corbeaux, to the effect of prosecuting the liquidation and payment of the credits in question, should fail in fulfilling their object from any cause whatsoever, which may be attributed to the said Sieur Corbeaux, injury would result therefrom to the Sieur Cazeau, who remains proprietor of one-fourth which he has reserved to himself in the aforesaid credits; and as this injury would be so much the greater, as, by the fourth article of their aforementioned contract, the Sieur Cazeau has deprived himself of the faculty of revoking the said powers, under the penalty of an indemnity of 20,000 piasters, it is further expressly agreed between the parties, that in case two successive sessions of the Congress of the United States (counting from the first which shall be opened after the date of these presents) shall pass away, without the definitive liquidation of the credits and claims of the Sieur Cazeau having been pronounced and concluded by the diligence which the said Sieur Corbeaux has bound himself to contribute to this result as promptly as possible, then this delay having fruitlessly occurred, the Sieur Cazeau shall re-enter upon the exercise of his natural rights, and may revoke freely and at all times the powers with which he has invested the said Sieur Corbeaux; nor shall the latter or his heirs or assigns ever recover of the said Sieur Cazeau the stipulated sum of 20,000 piasters, nor any other indemnity whatsoever for what cause.

"3d. To the end that the intention with which the 6th article of the aforementioned contract was stipulated between the parties, undersigned, may be better explained, it is further expressly agreed between them that the Sieur Corbeaux, invested with universal powers, shall likewise employ them, as far as it may depend on him, in procuring that the government of the United States shall place at the disposition of the Sieur François Cazeau, directly and in France, the amount of the one-fourth interest reserved by the latter in the proceeds of his total credits upon the said government.

"Done in triplicate, whereof one copy is retained by the Sieur

Cazeau, and the two others by the Sieur Corbeaux, at Paris, the 30th of November, 1807.

"The writing above, and on the preceding pages, approved.

"FRANCNIS CAZEAU.

"Valid as the acceptance of transfer of three-fourths interest in the credits of Mr. Cazeau upon the United States.

"FRANCOIS CORBEAUX, Jr."

On the 20th of December, 1808, some person (it does not appear who) obtained from Mr. Warden, then American consul in Paris, a copy of Corbeaux's said first agreement with Cazeau of the 30th of November, 1807. The consul's certificate to the copy is as follows:

"I, the undersigned, American consul and agent for prize causes at Paris, do hereby certify that the above instrument of writing is a true and faithful copy of the original, executed by the above-mentioned individuals, in the presence of the witnesses whose names are above written, and in that of my predecessor, Fulwar Skipwith, esq., as attested by his seal and signature; and the said original instrument is deposited in my office, and was there registered in folio 1, the 20th day of November, 1808. In testimony whereof, I have hereunto set my hand and seal this 20th of December, in the year of our Lord above written, and 33d year of American Independence.

"DAVID BAILIE WARDEN.

"CONSULATE OF THE UNITED STATES OF AMERICA, *Paris*.

In 1816, Corbeaux executed a power of attorney to James Grubb, with power of substitution, to collect the said claims against the United States, one-fourth for Cazeau, and three-fourths for Corbeaux, and Grubb substituted in his place Josephus B. Stewart.

In 1817, Stewart petitioned Congress on the subject of said claims, and Congress, on the 3d of March of that year, passed the following law:

"*Be it enacted, &c.*, That the sum of forty-two thousand seven hundred and thirty-seven dollars and ninety-three cents be paid, out of any money in the treasury not otherwise appropriated, to the legal representatives of Francis Cazeau, late merchant at Montreal, or to his or their assignee or attorney, or other person lawfully entitled to receive the same, in full compensation for all claims against the United States."—(6 Stat. at Large, 191.)

Immediately after the passage of said act, that is, in March, 1817, Stewart, having satisfied the Treasury Department that said Corbeaux had a right to receive from the United States said $42,737 93, and that he, Stewart, had authority from Corbeaux to receive the same, the Secretary of the Treasury caused the whole of said appropriation to be paid to Stewart.

Subsequently, Congress was applied to on behalf of the heirs of said Cazeau for the payment to them of said $42,737 93, on the ground that the Secretary of the Treasury had improperly paid that money, in 1817, to the attorney in fact of Corbeaux, when, as was alleged, the claims, for the payment of which the appropriation in

that year was made, belonged not to Corbeaux but to the heirs of Cazeau.

In 1836, the Solicitor of the Treasury, Mr. Maxcy, made a report to the Senate in favor of said heirs; but the Judiciary Committee of the House of Representatatives, in 1844, refused to concur in that report, except as to one-fourth of the claims. The reason of the opinion of the committee will appear when I come to notice the effect of Cazeau's death (which occurred in 1815) on the aforesaid deed of assignment. In accordance with the opinion of the committee, the following act of Congress was passed in June, 1844:

"*Be it enacted*, &c., That the sum of twenty-seven thousand three hundred and fifty-two dollars and thirty-two cents be paid, out of any money in the treasury not otherwise appropriated, to the legal representatives of Francis Cazeau, late merchant at Montreal, or to their legal attorney, or other person lawfully entitled to receive the same; it being one-fourth of the sum appropriated under an act of Congress approved on the third of March, one thousand eight hundred and seventeen, with interest from May, one thousand eight hundred and eighteen."—(6 Stat. at Large, 915.)

That sum of $27,252 32 was paid at the treasury, in 1844, to the present claimant, Jacob Bigelow, who acted then as he does now as the administrator of Cazeau's estate.

Mr. Bigelow, considering that Cazeau's estate was entitled not only to the one-fourth of the appropriation of 1817, which he has received, but also to the other three-fourths, now applies to this Court for an allowance of said three-fourths of the appropriation, with interest.

The question as to the validity of this claim against the United States, I shall now proceed to examine.

The objection made by the United States to this claim is, that they paid the money in 1817 to said Corbeaux's attorney; Corbeaux being. at the time, the owner of the claim.

The claimant denies that Corbeaux had a right to receive the money so paid.

The act of Congress of 1817, making the appropriation of $42,737 93 is copied into this opinion. The act directs the money to be paid "to the legal representatives of Francis Cazeau, late merchant of Montreal, or to his or their assignee or attorney or other person entitled to receive the same."

The two agreements of the 30th of November, 1807, between Cazeau and Corbeaux, under which Corbeaux's attorney received the money from the treasury, are also copied into this opinion. Their meaning, taken them together, as they must be taken, is as follows:

Cazeau, in consideration of twelve hundred thousand francs, sold and assigned to Corbeaux all his, Cazeau's, interest in three-fourths of said claims, and empowered Corbeaux to collect the same for his own use. Cazeau retained his interest in the remaining one-fourth as his own property, empowering Corbeaux to collect that one-fourth for him, Cazeau. If Cazeau should revoke the power as to his one-fourth, he was to forfeit to Corbeaux a penalty of $20,000, unless

before such revocation, two sessions of Congress had passed away without a settlement of the claims.

The claimant contends, on various grounds, that Cazeau's said deed of assignment of three-fourth parts of said claims to Corbeaux, in 1807, was uot binding on Cazeau's heirs in 1817, when the money now sued for was paid at the treasury to Corbeaux's attorney.

It is contended, in the first place, that said deed of assignment was obtained by fraud. There is no proof whatever of this objection; and if there were, it would not effect the case. Fraud does not render a contract void, but only voidable at the election of the party defrauded. (Per Parke, Baron, in Murray *vs.* Mann; 2 Welsb., Hurls., & Gordon, 538.)

And even if the assignment had been fraudently obtained by Corbeaux, there is no evidence that the Secretary of the Treasury, who paid the money to Corbeaux's attorney, had any notice of the fraud, and that is of itself a complete answer to the objection.

It is further objected, that previously to the payment at the treasury, in 1817, to Corbeaux's attorney, of the $42,737 93, Cazeau had revoked his power of attorney to Corbeaux. The only evidence relied on of such revocation is a paper having the signature of "Mre Thille," which paper is as follows:

"I have received of Monsieur Cazeau the sum of thirteen francs 49 centimes, ($2 65,) for the following instruments (actes) prepared at his request, to wit: The first, containing a revocation of the power of attorney executed by him to Mr. Corbeaux the 19th of April, 1808; 2d, the denunciation of the latter to the notary, dated the 22d of the same month; and 3d, a citation to M. Corbeaux, dated the 2d of the May following, by virtue of which I authorize and request Monsieur Lebon, advocate, to whom I have passed these instruments on the 26th of July last, with a copy of the power of attorney executed by Mr. Cazeau to Corbeaux, that he (M. Lebon) will be pleased to have them delivered to the door-keeper of the perfect. At Paris, this 26th of January, 1809.

"MRE THILLE."

This paper of Thille's is attached to a letter of Cazeau's of the 30th of November, 1808, to his children, and is a mere receipt to Cazeau for a trifling fee for preparing, among other papers, a revocation of a power of attorney from Cazeau to Corbeaux of the 19th of April, 1808. This receipt, the execution of which is not proved, does not state or profess to state that the revocation mentioned in it had been executed by Cazeau. Besides, no revocation by Cazeau could affect said assignment of the three-fourths of the claims as will be presently shown.

The claimant contends that the power of attorney was to continue only during the two next sessions of Congress, but in that he appears to be mistaken. I have already expressed my opinion as to the meaning of the deed of assignment of the 30th of November, 1807, and of the explanatory agreement of the same date. I consider the proper and legal construction of those two instruments, on this point, to be as before stated, namely, that in case Cazeau should revoke the

power as to his one-fourth, he should forfeit $20,000, unless, before such revocation, two sessions of Congress had passed away without the claims being settled. The reason of the penalty was, no doubt, this: Corbeaux paid a large sum, $200,000, for the three-fourths of the claims. It might be that the United States would require the whole of the claims to be settled at the same time, and with one person; and it might therefore prejudice Corbeaux, if Cazeau should revoke the power as to his, Cazeau's, one-fourth; hence the insertion of the penalty of $20,000 in case of such revocation; but, at the same time, should the then next two sessions of Congress pass away without a settlement of the claims, Cazeau took care to provide that he might revoke the power as to his own one-fourth without incurring said penalty.

The petition alleges that, in April, 1808, Cazeau instituted criminal proceedings against Corbeaux, in consequence of which the said assignment was annulled. But there is no evidence whatever of the annulment of said assignment. Cazeau's said letter of the 30th of November, 1808, to his children, says that he had brought Corbeaux before the criminal court, and that his authority to him, Corbeaux, would be annulled. This letter of Cazeau's, were it even proved to be genuine, would not be admissible evidence in this suit by his administrator. It is not even sworn to. But this letter, itself, expressly alleges that the case, whatever it was, *had not then been decided.*

The claimant produces another paper to show said criminal proceeding against Corbeaux. That paper is as follows:

"In the year 1808, on the 1st day of July, at the request of M. François Corbeaux, jr, residing in Paris, at No. 19, street de la Sourdière, whose domicil is fixed by his choice in the dwelling-house of the undersigned huissier, [officer of justice,] we, the undersigned, Simon Deligneul, huissier audiencier [officer who superintends the arrangements of a court] of the court of appeal, residing in Paris, at No. 41, street and division des Lombards, commissioned on the 30th of March last, did signify and declare to M. François Cazeau, formerly a merchant at Montreal, in Canada, and now, as it appears from the summons given at his request, on the 2d of May last, to the said Corbeaux by Matthew Thille, huissier, dwelling in Paris, at No. 21, street de Verneuil, where we proceeded, and being there, did address him in person to the following effect:

"That the said Corbeaux, although he does not mean to approve in any manner whatsoever the said summons, nor to admit the approval of it by the said M. Cazeau himself, as there does not appear to have been any authority for it on the part of the latter, nor the pretended recall of the power given by him previously to the said Corbeaux before several notaries, and drawn up, as this huissier says, on the 19th of April last, through his official agency, at the request of the said Cazeau, and delivered to him, the said Corbeaux; but simply to prove to the said Cazeau that he does not intend to appropriate to himself nor to retain his papers without order or account, as they do not at all interest the said Corbeaux, but concern the said Cazeau, who had asked the said Corbeaux confidentially and volun-

tarily to keep them at his house, without any obligation on his part to answer for them either verbal or in writing, but only with the persuasion that the said M. Cazeau might withdraw them from the domicil of the said Corbeaux, in which he had placed them of his own accord.

"That the said M. Corbeaux now really offers to the said Cazeau sixteen documents, of which the first, dated April 28, 1778, contains an acknowledgment before the notaries of Quebec, at the residence, Montreal, for the sum of nine thousand livres, by M. Fondre François Odelin, residing at La Tortue, in the parish of St. Pierre, near the Prairie de la Madelaine; the second is a note to order, in form of a promise under private signature, dated the 9th of October, 1776, and signed by the said Odelin, in favor of the said Cazeau, for the sum of nine thousand livres which he had passed to the order of Messrs. Watson, who had transmitted it to M. Debray; the third paper is a notification and declaration of the said Debray, holding the order of the said Watson, to M. Bagnolet as *curateur a l'interdiction* [a tutor appointed by a court to take care of the property of a person insane or otherwise incapable of managing it himself] of the said Odelin, served by Poulain, a huissier, at Amiens, on the 18th of January, 1778; the fourth is a notification of the said *acte* of acknowledgment of the nine thousand livres above mentioned, served at the request of the said Cazeau on the 10th of January, 1778, by the said Poulain on the said Bagnolet, in his character of *curateur a l'interdiction* of the said Odelin, who subscribed the same acknowledgment, as appears from the said paper.

"The other twelve documents are copies of petitions, statements, and notes, interesting only to the said Cazeau, without any connexion whatever with the said Corbeaux, and of no use to M. Cazeau, except as affording information in proof of the debt in question, which he may recover. Which sixteen papers have been by us first numbered and marked properly, and then *ne variatured.*

"The said M. Corbeaux further consents that the documents deposited by himself and M. Cazeau in the office of his excellency the minister of foreign relations, may be withdrawn by the said Cazeau within any period which he may consider proper; it being understood, however, that this consent given by M. Corbeaux is not to injure or affect him, and that all his pretensions and rights are to remain entirely preserved. He, moreover, declares that several other papers have been long since restored by him, the said Corbeaux, not only to M. Cazeau, but also to other third persons, from whom he had received them on his part; and that he makes express reservation of all his rights arising from the agreements, which the said Cazeau and Corbeaux have previously entered into; and the latter signed this paper thus, after erasing eighteen words.

"FRAS. CORBEAUX, Jr.

"Which offers were made to M. Cazeau who was at the same time required to give a complete and satisfactory discharge; whereupon he replied that he would not accept a part of his papers, without

having the whole as he demanded. On being summoned to sign, he said that he would sign nothing, which answer we have considered as a refusal to receive the said documents, which had been offered to him, and to give the said Corbeaux a satisfactory discharge for them.

"Of all which, we have made and drawn up this present statement, of which the said M. Corbeaux may avail himself at such time and place as he may consider expedient; and we have given to M. Cazeau this present copy, after having been employed double time on it, for which the whole cost is twelve francs.

"DELIGNEUL."

This paper, signed "Deligneul," shows that the proceeding described by him, and referred to in Thille's said receipt, resulted in nothing; and Cazeau's said letter shows that several months *after that proceeding*, the case, whatever it was, remained undecided.

There is nothing but those two papers relied on by the claimant, to show the alleged criminal proceeding to which he refers; and it is plain that, were those papers admissible as evidence, they would afford no ground whatever from which to infer that the assignment had been annulled. Indeed, the claimant's counsel, in their brief, admit that no such annulment has been proved. Their language is as follows: "Cazeau did proceed against Corbeaux criminally; but, as appears from the record of that proceeding on file, there could be no order for cancellation of the instrument in a criminal proceeding, but it was probably surrendered in consequence of that proceeding."

It is further objected that, at the time of the payment at the treasury to Corbeaux's attorney, in 1817, of the $42,737 93, Cazeau was dead, and that his death had revoked his power of attorney to Corbeaux to collect the aforesaid claims.

It must be recollected that one-fourth of the amount of the claims, though paid by the treasury to Corbeaux's attorney, in 1817, was paid over again in 1844, at the treasury, to the present claimant, Bigelow, as administrator aforesaid. That one-fourth which has been twice paid by the United States, is now admitted to be extinguished. The present claim is for the other three-fourths, which, as I have already stated, was regularly and, in my opinion, *bona fide* assigned in 1807 by Cazeau to Corbeaux for a valuable consideration. The power of attorney contained in that assignment of said three-fourths was a power coupled with an interest, and was, therefore, not revocably by Cazeau in his lifetime, nor was it revoked by his death. Judge Story's language on the subject is as follows: "In the case of an authority coupled with a vested interest in the thing, we have already seen that it is not extinguished by the death of the principal, for the very reason that it can still be executed in the name of the agent, he having the vested legal or equitable title in the thing, which he can transfer or change by his own act as owner."—(Story on Agency, section 496.) That principle applies to the case before us. Here, the express assignment by Cazeau to Corbeaux of the three-fourths, gave the latter a vested interest therein, which could not be divested by Cazeau in his lifetime, nor by his death. The truth is, the power

of attorney, as to the three-fourths now sued for, was inserted in the deed of assignment from abundance of caution. That assignment of the three-fourths being absolute, required no power of attorney to aid it; and the power, so far as concerns those three-fourths, is mere surplusage.

It is further contended that the deed of assignment by Cazeau to Corbeaux was inoperative, on the ground that such claims are not assignable. But it is clear, that, at the time that deed was executed, such claims against the government were assignable; and the Supreme Court of the United States has decided them to be so over and over again. In a very late decision, the court speaks as follows: "And as respects the validity of assignments of claims like the one here presented, [an unliquidated claim of an individual against the government of Mexico,] no question can be raised at this day, as such assignments have been recognized by the various boards of commissioners, and the courts of justice, for many years."—(Judson *vs.* Corcoran, 17 Howard, 614.)

Again: The act of Congress of 1817, allowing the $42,737 93, directs to whom the money should be paid, namely, "to the legal representatives of Francis Cazeau, late merchant at Montreal, or to his or their assignee, or attorney, or other person," &c.—(6 Stat. at Large, 191.)

Cazeau being then dead, this act expressly authorizes the payment to any person to whom Cazeau, in his lifetime, might have assigned the claims.

The claimant contends, that the original deed of assignment to Corbeaux was *surrendered* by him to Cazeau or his heirs, before the treasury payment to Corbeaux's attorney in 1817.

There is no direct evidence of the surrender, but the claimant attempts to prove it by circumstances.

He relies, in the first place, on a part of the report of Mr. Maxcy, Solicitor of the Treasury, made in 1836, and the papers referred to in the report.

Mr. Maxcy's language is as follows:

"In less than five months after its (the assignment's) execution, on the 19th of April, 1808, he (Cazeau) *revoked the power of attorney*, and instituted, in the May following, a criminal proceeding against Corbeaux, for the purpose of annulling the agreement and punishing him for his fraud; and Corbeaux's answer to this proceeding shows that he surrendered many papers delivered to him by Mr. Cazeau. (See letter from Mr. Cazeau to his grandson, with a receipt of the bailiff, Thille, attached thereto, marked A A; and Corbeaux's answer, marked B B.) This proceeding probably ended by an order for the surrender of the assignment and power of attorney to Cazeau and the consequent inaction of Corbeaux under it."

It will be observed, that the only papers relied on by Mr. Maxcy for considering it *probable* that a criminal proceeding against Corbeaux ended in an order for the surrender of the deed of assignment and power of attorney to Cazeau, are Cazeau's letter, Thille's receipt, and Corbeaux's answer contained in the paper signed "Deligneul." I have

already had occasion to examine and comment on those papers, and have shown, I think, that they furnish no ground for Mr. Maxcy's conjecture.

The claimant relies, in the second place, to show a surrender of said deed of assignment, upon what he considers evidence of a possession of the deed by Cazeau or his heirs. The circumstances relied on to show such possession are as follows:

First. The following part of said report of Mr. Maxcy: "The original papers had, in fact, been sent by Cazeau, as early as 1809, to General Mason, of Georgetown, with a power of attorney to prefer his claims to Congress. While General Mason was awaiting for additional documents from Cazeau's grandson, Mr. Reeves, of Canada, the late war with Great Britain took place, when it was not deemed expedient to petition Congress for money. Immediately after the war Cazeau died; and General Mason, considering his power of attorney as revoked by that event, took no steps towards the recovery of the claim, but two years after Cazeau's death, on the application of Mr. Reeves, of Canada, delivered to him all the papers in his possession, as the representative of his grandfather's family; and these original papers are now presented to the Senate, by Mr. Bigelow, as agent of Cazeau's heirs.—(See General Mason's letter, E E.)

From a cursory reading of the last above extract from Mr. Maxcy's report, it might be supposed that, in speaking of Cazeau's original papers in General Mason's possession, Mr. Maxcy meant that the original deed of assignment from Cazeau to Corbeaux was one of those papers; but an inspection of General Mason's letter, which is all Mr. Maxcy here refers to, will show that that is not Mr. Maxcy's meaning. It is true that the claimant, Mr. Bigelow, states in the petition that said deed of assignment was one of the papers in General Mason's possession, but he is not supported by that letter. The following is a copy of General Mason's letter:

"GEORGETOWN, *7th April*, 1834.

"DEAR SIR: In compliance with your request to give you such information as I may possess in relation to a claim of the late Francis Cazeau, formerly of Canada, and, in the latter part of his life, residing in Paris, I have to state, that in the year 1809, as I find by reference to my books, I received letters from that gentlemen and from a Mr. Orthling, his friend or attorney, with a power from Mr. Cazeau to apply to the American government, by petition to Congress, or otherwise, for payment of very large claims, the amount not now remembered, that he professed to have against it, as, I think, for supplies furnished or services rendered by him, perhaps both, to the American army, or to agents of the American government, during the revolutionary war, and also, as I believe, for lands or other property lost in consequence of his espousing the American cause. Other letters were afterwards written me, by one or both of those gentleman, on the same subject; and, as I find, the correspondence was continued until July, 1811.

"For the documents to support these claims, I was referred to Mr. Victor Dupont, and a Mr. Duplanty, in this country. From this last

I learned, after some lapse of time in finding him out, (Mr. Dupont not being then in this part of the country,) that the documents in question were in the hands of Mr. Cazeau's son, then in Canada, to whom I wrote in the fall of 1809. In the spring of 1810, I received from him part of the documents, by a private conveyance, relating to one branch of the claim, amounting to some twenty-odd thousand dollars, reported as due Cazeau by William Barbour, in some public capacity, in the year 1785—I think to the Congress of that day; and information from Cazeau (the son) that the remainder of the documents relating to the loss of lands, &c., were so bulky that the person to whose charge the others had been committed could not take them, and that they should come by another opportunity; as late as July, 1811, as noted in a letter from me to Mr. Cazeau, (the elder,) I see that these had not then come to hand. In a communication from this last mentioned gentleman made in 1810, the late Joel Barlow was associated with me in the power to prosecute these claims; but the want of documents then to enable us to proceed, and his departure for France, as minister for the United States near that government, in the summer of 1811, prevented his taking any active part in the business.

"The non-reception of the papers that were expected from Canada barred my further movements in this matter, as well as my recollection serves me, until the state of war which took place during the next year (1812,) when it was considered useless to attempt, in that situation of our affairs, to obtain any grant of this nature from Congress; and no petition, in relation to these claims, was presented by me then or afterwards; not afterwards, as I believe, because of my hearing of the death of Mr. Cazeau, before or soon after the termination of the war, and that his power to me had died with him. Nor did I hear anything more of the affair, until some year or more had elapsed. In the month of August, in the year 1817, (I get the date from a receipt given for reimbursement made by him for some postages I had paid in the case,) a Mr. Reeves, of Canada, called on me, as the representative of Mr. Cazeau's family, to ask for the papers and documents in this claim, which had come into my hands, and which I delivered him; and it was from him, as I am pretty sure, I heard, for the first time, that application had been made to Congress for indemnification for these claims, and that such had been received for them, or part of them, then recently, by some person, but by whom I don't now recollect, fraudulently, or by some device in which the name of, or an obsolete power from, the late Mr. Cazeau had been improperly used.

"If I had had any intimation of such a procedure, although the power to me had become extinct, I should certainly have interfered to prevent it.

"I must presume that the name of Mr. Cazeau did not appear in any public notice of the transaction, or it would have struck my attention.

"I never knew Mr. Cazeau personally, but from the channel through which the claim came to me, I believed him to be an honorable man,

and, from the documents sent me, that he had been a great sufferer in our cause, and had good right to indemnification for losses he had incurred.

"With much regard, yours, &c.,

"J. MASON.

"FRANCIS S. KEY, Esq., *Georgetown.*"

There is surely nothing in that letter tending, in any manner, to show that original deed of assignment was among the papers in General Mason's possession. Indeed, the language of the letter seems to show the contrary to be the fact.

Second. An *ex parte* affidavit of one William Smith, which, according to Mr. Key's argument, was made to meet an objection raised in a committee of one of the Houses of Congress to the claim. That affidavit, made in 1838, is now produced to show the possession of said deed by Cazeau or his heirs. This affiant married a granddaughter of Cazeau's, and is not, therefore, a competent witness, being directly interested in the event of the suit. It does not appear but that the deposition of Mr. Smith might have been taken, and the affidavit is also objectionable for that reason. His whole statement, too, is mere hearsay and conjecture, except as to one alleged fatc, which is, that in 1824 he received, in the city of Washington, from General Jones the papers in the case, among which he says "were the two original papers before referred to." The papers thus referred to are described in a previous part of the affidavit as "the two original papers bearing date the 30th November, 1807." This is no description, except as to the date, of the deed of assignment of the claims by Cazeau to Corbeaux. Such a description is entirely too indefinite to be relied on. Besides, as General Jones resides in the city of Washington, why is it that his deposition has not been taken by the claimant? General Jones is a gentleman of great respectability, and, so far as we are informed, has no interest in the claim. It is unnecessary to notice further the affidavit of Mr. Smith, of whom we know nothing, except that he was at one time an agent of the heirs, and will be entitled by law, through his wife, to a share of whatever may be recovered in this suit. The claim being a very large one, he has a great interest at stake. His *ex parte* affidavit, under the circumstances, is entitled to no weight.

Third. An *ex parte* affidavit of the claimant himself, Mr. Bigelow, stating that he received said deed of assignment, in 1831, from Cazeau's heirs; but no importance can be attached to that affidavit. There was nothing, after this Court was organized, to prevent the taking of the affiant's deposition. His deposition should have been taken, after notice to the Solicitor of the time and place of taking it. An opportunity would then have been given to the government to cross-examine the witness, and to ascertain from him whether or not he is interested in the event of the suit. I exclude, therefore, from my consideration of the case, this *ex parte* affiidavit of the claimant as well as that of Mr. Smith.

Fourth. The original deed of assignment was in court at the trial.

That is true, and the deed is now before us. But how did it get here? Where did it come from? These inquiries, however important they may be, are easily answered. That deed, it is certain, did not come to us from the possession of Cazeau's heirs or of the claimant; and it is equally certain that *it did come here from the Treasury Department.* It was transmitted to this Court by the Secretary of the Treasury on the 4th of January, 1855. To show that I am right in this matter, the Secretary's report transmitting to this Court said original deed (designated in that report as No. 2) is here copied, and is as follows:

"TREASURY DEPARTMENT,
"*January* 4, 1855.

"*To the Court of Claims:*

"For the purpose of complying with your order of the 8th November last, in the case of Jacob Bigelow, administrator of Francis Cazeau, *vs.* The United States, I have called on the Register of the Treasury, in whose custody such papers are placed by law, for those therein mentioned. That officer has sent me a large mass of papers concerning the claim of Francis Cazeau and his representatives, and informs me that since the settlement made by the accounting officers, on the 7th March, 1817, under the act of 3d March, 1817, directing the sum of $42,737 93, to be 'paid to the legal representatives of Francis Cazeau, late merchant at Montreal, or to his or their assignee, or attorney, or other persons lawfully entitled to receive the same, in full compensation of all claims against the United States,' the papers relating to this claim have been so often called for and examined by the committees of both Houses of Congress, by the accounting officers, and by various gents who have, from time to to time since that period, been permitted to examine them in behalf of parties, who have claimed to be interested therein, that the whole have been thrown into such confusion that it is now impossible to ascertain precisely upon what vouchers the settlement under the act of 3d March, 1817, was actually made, as they have not been kept distinct from the papers subsequently added to the mass; and it appears evident that some papers originally belonging to the settlements made in 1817 and in 1844 have disappeared, and can no longer be found.

"In answer to the first item of the call, being for the vouchers on which the settlement under the act of 3d March, 1817, was made, I have accordingly caused to be selected from the mass such papers as seem to have been applicable to that settlement, and herewith transmit them.

"No. 1, being a copy of the act of 3d March, 1817, certified by the chief clerk of the State Department.

"No. 2, being one of the original parts of an instrument, purporting to have been executed in duplicate on the 30th November, 1807, under the hands and seals of Francis Cazeau and Francis Corbeaux, junior, by which, for the consideration therein expressed and acknowledged to have been received, Francis Cazeau sold, assigned, and transferred to Francis Corbeaux, junior, three quarter parts of

the claim of the said Cazeau against the United States, and gave said Corbeaux full and irrevocable power to collect the remaining quarter part of said claim, in behalf of said Cazeau, stipulating a penalty in case the latter should revoke the power to collect the quarter part so retained by him.

"This instrument of assignment and power of attorney appears to have been formally acknowledged before Fulwar Skipwith, commercial agent of the United States and agent for prize causes at Paris, as certified under his official seal at the date of its execution by the parties thereto.

"No. 3, being a copy of the above described instrument of assignment of three-fourths of the claim and power of attorney to collect the other one-fourth, by David Bailie Warden, American consul and prize agent at Paris, who certifies under his official seal that the original was deposited in his office on the 20th November, 1808; the certificate being dated 20th December, 1808.

"No. 4, being original power of attorney, dated 6th May, 1816, from Francis Corbeaux, jr., as assignee of three-quarters of Cazeau's claim against the United States, and attorney to collect the other quarter, to James Grubb, to collect and receive in behalf of Corbeaux the amount of the claim, with power of substitution, acknowledged before James Harding, notary public at London, on the same day. Upon this original power is endorsed the substitution of Josephus B. Stewart, by Grubb, on the 9th May, 1816, and the whole is authenticated by Thomas Aspinwall, United States consul at London, under his official seal.

"No. 5 is the statement of the account of the legal representatives of Francis Cazeau, under the act of 3d March, 1817.

"No. 6 is the original settlement, No. 34,144, made by the accounting officers in favor of Josephus B. Stewart, as substitute of Francis Corbeaux, junior, attorney and assignee, of $42,737 93, under the act of 3d March, 1817, in full compensation for all claims against the United States; which amount was paid Stewart from the treasury accordingly.

"The foregoing comprise the vouchers upon which the settlement referred to in your order, either was or might have been made, together with the original settlement itself.

"The second item of your call is for 'an instrument purporting to be an original assignment from Francis Cazeau to Francis Corbeaux, which was filed among the papers relating to this claim, by the representatives of Cazeau'.

"Whether the paper herein above described, as marked No. 2, was originally filed in support of the claim of the representatives of Cazeau, under the act of 3d March, 1817, or has been subsequently placed among the papers, and by whom, I am unable to state upon distinct information. It would seem from the terms of the letter addressed by R. B. Taney, Secretary of the Treasury, to H. L. White, of the Committee of Revolutionary Claims of the Senate, dated 8th March, 1834, that, at that time, an assignment from Francis Cazeau to Francis Corbeaux was among the papers in the custody of the Register,

the phraseology employed evidently referring to a valid original document; while the report of Mr. Maxcy, page 10, of 15th June, 1836, states that the paper in the Register's office to be merely the of an assignment, without validity as evidence. When, by whom, or upon what authority, the brief memorandum on the back of No. 2, which appears to be in a similar handwriting with the filing and marking of the papers by Mr. Maxcy, was made, I have no information whatever. The paper marked No. 3 is evidently that described by Mr. Maxcy. Whether that was the only proof of the assignment at the time the settlement was made by the accounting officers, under the act of 3d March, 1817, I have no means of knowledge beyond what now appears from the papers. The document referred to by Mr. Maxcy as the original, and by him marked Y, is evidently a copy, as will be seen among the papers marked by him, and herewith transmitted.

"The first clause of the third item of your call is for 'the papers relating to the claim of said Cazeau, referred to in a report upon said claim by Virgil Maxcy, Solicitor of the Treasury, of the 15th June, 1836, found in Senate documents, No. 428, 1st sess. 24th Congress.'

"In compliance with that clause, I herewith transmit the papers referred to, so far as they are now found in the mass which were marked by Mr. Maxcy in succession from A to Z, (no paper appearing to have been marked N by him,) and A A to I I, excepting that none marked C C have been found.

The last clause of the third item of your call is in these terms: 'Together with any papers connected with the subject which you may deem important in an investigation of this case.'

"Under this call, I herewith transmit the papers of settlement, No. 89,673, made by the accounting officers in favor of Jacob Bigelow, administrator of Francis Cazeau, on the 29th August, 1844, as follows:

"No. 7. Copy of act of Congress of 15th June, 1844, directing $27,352 32 to be paid to the legal representatives of Francis Cazeau, being one-fourth part of the sum appropriated by act of 3d March, 1817, with interest from May, 1818.

"No. 8. Statement of account under last named act.

"No. 9. Certificate of orphans' court of Washington county, that Jacob Bigelow is administrator of Francis Cazeau.

"No. 10. Original settlement, No. 89,673, of accounting officers in favor of Jacob Bigelow, administrator, dated 29th August, 1844, upon which $27,352 32 has been paid from the treasury to Bigelow.

"These papers are regarded as important in the investigation of this case, and are accordingly sent under this call, for the purpose of enabling the Court to perceive the grounds on which this payment was directed by law in 1844, when Congress had in 1817 made an appropriation in full compensation of the claim of Francis Cazeau.

"It seems to have been understood, when the act of 1844 was passed, that the payment of three-quarters of the claim of Francis Cazeau against the United States was legally and properly made in 1817 to the substitute of Corbeaux. If faith is to be reposed in written instruments solemnly executed and duly promulgated by being de-

posited and registered in the office of the agent of the United States at Paris, it was clearly so. The criticism of Mr. Maxcy as to the effect of the paper marked by him Z, seems to be wholly misplaced, probably from want of a correct translation of the entire paper. He regards it as an agreement between the parties to the assignment, that the authority to collect the claim shall only extend to two sessions of Congress, when, in fact, the paper recognizes the conveyance, in absolute property, of three-quarters of the entire claim, and the limitation of time only extends to the one-quarter to which Cazeau retained the beneficial interest. What would be the legal or equitable effect of such an agreement, or of any revocation of the power of attorney, not notified to the United States upon whom it was to operate, it is not now necessary to consider, as the authority to collect this quarter part, in behalf of Cazeau, clearly ceased by his death in 1815; and, upon this ground, the payment of this quarter part to Stewart was made without legal authority. Hence the act of 1844 provided for the payment of this quarter part of the sum allowed in 1817, with interest thereon from May, 1818, being the date when the proper agents were apprised of the death of Cazeau at a date previous to the settlement. The facts of the payment made to Bigelow in 1844 are therefore material to be understood.

"There is a mass of papers filed with these settlements which are not included in your call, and which will be sent should the Court specify what they desire.

"JAMES GUTHRIE,
"*Secretary of the Treasury.*"

This report of the Secretary shows, what I have before stated, that the original assignment was produced at the trial, not from the possession of the claimant, *but from the possession of the Treasury Department.* Whether this original assignment (marked No. 2) was originally filed in support of the claim of the representatives of Cazeau, under the act of 3d March, 1817, or had been subsequently placed among the papers, and by whom, the Secretary of the Treasury is unable to state upon distinct information. Neither has the Secretary any means of knowledge, beyond what appears from the papers, whether the copy (marked No. 3) was the only proof of the assignment at the time the settlement was made by the accounting officers under the act of 3d March, 1817.

I have now shown that it is not proved that either Cazeau or his heirs ever had possession of said original deed of assignment, after it was deposited, in the year 1808, in the office of the American consul at Paris. All the reliable information we have as to where the deed has been since it was so deposited is, that it was on and before the 4th of January, 1855, in the Treasury Department of the United States, and was, on that day, transmitted by the Secretary of the Treasury to this Court.

The argument, therefore, founded on the supposed possesion of the deed of assignment by Cazeau or his heirs, to show a surrender of the deed to him or them, is without foundation. But had there been such

possession *after* the treasury payment was made, it could have very little weight; and even such possession before the payment would seem to require some additional evidence to prove the surrender of so valuable a deed; as to that, however, I have no decided opinion.

It is alleged that the payment was made at the treasury, in 1817, to Corbeaux's attorney, upon his presentation of a copy of thedeed of assignment, and that, therefore, the payment was unlawfully made. To this objection there is a short and conclusive answer, which is, that the fact is not proved that the payment, in 1817, was made on the presentation of a copy. That fact is not shown by the report of the Secretary of the Treasury, nor is it shown by any other evidence. But there is another answer to the objection, not quite so short but equally conclusive. It is this: that were it admitted that the payment in question was made on the presentation of a copy, that would not show the payment to be wrongful. I admit, of course, the familiar principle, that, on the trial of a cause in court, the best evidence must be produced or its absence accounted for, and that an original instrument is better evidence than a copy. But that principle has nothing to do with this case. The question we have here to decide is, not what evidence was before the Secretary of the Treasury when he paid the money to Corbeaux's attorney, in 1817, but whether, at that time, Cazeau's heirs were the owners of three-fourths of the claim? It is certain that ten years before the payment, namely, in 1807, Corbeaux was the owner of said three-fourths, by a regular deed of assignment from Cazeau, which deed is now before us; and the claimant to invalidate the treasury payment of those three-fourths to Corbeaux's attorney, in 1817, must prove that previously to such payment, Corbeaux's ownership had ceased, and Cazeau or his heirs had become the owners. But the claimant has furnished, in my opinion, no such proof, and the consequence is, that the said payment must be considered as rightly made to Corbeaux's attorney. That being the case, it is perfectly immaterial whether any or what evidence of Corbeaux's right to said three-fourths of the claim was before the Secretary of the Treasury who paid the money.

I have now, I believe, examined every material question involved in this case; and to avoid any misunderstanding as to the contents of the contracts, or of the other material papers in the cause, I have copied them into this opinion.

It appears to me that there is no foundation for the claim.

IN THE COURT OF CLAIMS.

FRANCIS CAZEAU'S ADMINISTRATOR *vs.* THE UNITED STATES.

SCARBURGH, J.:

This claim arose during the revolutionary war. Congress, by an act approved March 3, A. D. 1817, provided for it as follows: "That the sum of forty-two thousand seven hundred and thirty-seven dollars and ninety-three cents be paid, out of any money in the treasury not

otherwise appropriated, to the legal representatives of Francis Cazeau, late merchant at Montreal, or to his or their assignee or attorney, or other person lawfully entitled to receive the same, in full compensation for all claims against the United States."—(6 Stat. at L., p. 191.)

By a deed bearing date the 30th day of November, A. D. 1807, Francis Cazeau assigned to Francis Corbeaux three-fourths of this claim, and thereby authorized him to prosecute and receive the whole thereof, the three-fourths for the use of Corbeaux, and the remaining fourth for the use of Cazeau. This deed was executed by both the parties in the presence of Fulwar Skipwith, commercial agent of the United States, and of the subscribing witnesses, at Paris, on the day of its date; and it was deposited in the office of the American consul at Paris, where it was registered on the 20th day of November A. D. 1808.

On the same day with the date of the deed, another instrument, the object of which was to explain the deed, was executed in triplicate by these parties. It expressly declares "that in no possible case, nor under any pretext whatsoever, may either the one or the other of the parties to the aforesaid contract claim to annul it; that is to say: that on the one hand, whatever may be the event or the success of the claims of the Sieur Cazeau upon the government of the United States; or whatever may be the incidental circumstances which may supervene relatively to this object, neither the Sieur Corbeaux, nor his hiers or assigns may claim the restitution of the sum of twelve hundred thousand francs, which have been by him paid to the said Sieur Cazeau for the price of the cession and transfer in question; nor of any part of that sum; the whole of which is received from this moment forever and definitively by the said Sieur Cazeau, in every state of things whatsoever. And that on the other hand, the three-quarters interest granted and transferred by the Sieur Cazeau to the Sieur Corbeaux in the aforesaid credits and claims, are equally for this moment and forever received by the latter, definitively, irrevocably, and likewise in every state of things whatsoever."

It then further declares: "2d. Forasmuch as, if the full powers conferred by the said Sieur Cazeau upon the said Sieur Corbeaux to the effect of prosecuting the liquidation and payment of the credits in question should fail in fulfilling their object from any cause whatsoever, which may be attributed to the said Sieur Corbeaux, injury would result therefrom to the Sieur Cazeau, who remains proprietor of one-fourth, which he has reserved to himself in the aforesaid credits; and as this injury would be so much the greater, as by the fourth article of their aforementioned contract the Sieur Cazeau has deprived himself of the faculty of revoking the said powers, under the penalty of an indemnity of twenty thousand piastres, it is further expressly agreed between the parties that in case two successive sessions of the Congress of the United States (counting from the first which shall be opened after the date of these presents) shall pass away without the definitive liquidation of the credits and claims of the Sieur Cazeau having been pronounced and concluded by the diligence which the said Sieur Corbeaux has bound himself to contribute to this result as

promptly as possible, then, this delay having fruitlessly occurred, the Sieur Cazeau shall re-enter upon the exercise of his natural rights; and may revoke freely and at all times the powers with which he has invested the said Sieur Corbeaux; nor shall the latter or his heirs or assigns ever recover of the said Sieur Cazeau the stipulated sum of twenty thousand piastres, nor any of the indemnity whatsoever for that cause."

Francis Cazeau died in the year 1815.

On the 6th day of May A. D. 1816, Francis Corbeaux, by a power of attorney of that date, in which the deed of assignment from Cazeau to Corbeaux is referred to, appointed James Grubb his agent to prosecute and recover the claim, the three-fourths for the use of Corbeaux, and the remaining fourth for the use of Cazeau; and on the 9th day of May, A. D. 1816, James Grubb substituted Josephus B. Stewart in his place, and, as such substituted agent, Stewart prosecuted the claim and received the money appropriated by the act of March 3, A. D. 1817.

Afterwards, Congress, by an act approved June 15, A. D. 1814, provided "that the sum of twenty-seven thousand three hundred and fifty-two dollars and thirty-two cents be paid, out of any money in the treasury not otherwise appropriated, to the legal representatives of Francis Cazeau, late merchant at Montreal, or to their legal attorney or other person lawfully entitled to receive the same; it being one-fourth of the sum appropriated under an act of Congress approved on the third of March, one thousand eight hundred and seventeen, with interest from May, one thousand eight hundred and eighteen." (6 Stat. at L., p. 915.) The sum thus appropriated has been paid to the petitioner.

The petitioner now claims the residue of the appropriation made by the act of March 3, A. D. 1817, upon the ground that Josephus B. Stewart was not lawfully authorized to receive it, and that, consequently, the payment made to him is not binding on the legal representatives of Francis Cazeau.

The petitioner has insisted, in argument, that the power of attorney from Cazeau to Corbeaux was revoked by the death of the former. In regard to the one-fourth of the claim reserved by Cazeau, this is true; and it was, doubtless, for this reason that Congress passed the act of June 15, A. D. 1844. But in regard to the three-fourths, which were assigned to Corbeaux, this principle is inapplicable, because the power as to that was coupled with an interest, and irrevocable, therefore, even by the death of Cazeau.—(Hunt *vs.* Rousmanier, 8 Wheat, R., 174.)

The petitioner has also urged, in argument, that the claim was not assignable. To this objection the act of March 3, A. D. 1817, furnishes a complete answer. It, in express terms, directs the payment to be made to the legal representatives of Francis Cazeau, or to his or their assignee, or attorney, or other person lawfully entitled to receive the same. As the payment was not to be made to Francis Cazeau, but to his legal representatives, it is plain that, in the contemplation of the statute, Cazeau was dead; and, of necessity, therefore, in re-

ferring to *his* assignee, it meant to recognzie any assignment made by him in his lifetime. If, then, the payment was made to such assignee, or to the lawful attorney of such assignee, it was valid.

Much stress, too, was laid on the fact that the payment was made on the production of only a copy of the assignment. It is manifest, however, that if the deed of assignment was valid in its inception, and continued in force at the time of the payment, it is wholly immaterial whether the original or only a copy was then produced. It is only in the event that a prior annulment of the deed can be shown that the non-production of the original at the time of payment can become important. If this could be shown, then perhaps the United States could not defend the payment on the ground of any equity arising in their favor from the want of notice of its annulment, because the failure to produce the original ought to have put them on the inquiry. But on this point I give no opinion.

The petitioner alleges in his petition that no part of the 1,200,000 francs mentioned in the deed as the consideration of the assignment was ever paid by Corbeaux to Cazeau. The receipt of the whole amount is expressly acknowledged in the deed. Still this acknowledgment is not conclusive upon Cazeau. Though made by deed, he and those claiming under him are not estopped from denying it; but it throws the burden of proof on them. Not only is the evidence in the record wholly insufficient to show that the consideration stated in the deed was not paid, but on the contrary, we find the payment again solemny acknowledged by Cazeau in the collateral instrument executed on the same day with the deed of assignment. The statement made by Stewart before the committee of the Senate, in 1817, that Cazeau made the assignment to Corbeaux "as a retribution for his generous support of himself and family," was not made within the scope of his authority, and, as between Corbeaux and Cazeau, was not binding on the former. But even if the consideration was different from that expressed in the deed, or there was no consideration at all, still the assignment, being made by an instrument under seal, was valid, unless it was tainted by fraud. If the consideration was so tainted, the fraud rendered the deed voidable only, and not void; and, therefore, to affect the United States at all on this ground, it must be shown that they had notice of it before the payment was actually made. It is not pretended that they had any such notice. Moreover, fraud is not to be presumed, it must be proved; and the evidence here is wholly insufficient for this purpose. It seems to me that there is no ground for saying that the assignment was not valid in its inception.

The petitioner avers in his petition that in April, A. D. 1808, Cazeau revoked the power of attorney given by him to Corbeaux, and caused criminal proceedings to be instituted against him; in consequence of which the original power and assignment were surrendered to Cazeau and annulled, and have ever since been in the possession of himself and his heirs until filed with their papers before Congress. The principal evidence to sustain this averment is a letter from Cazeau to his grandson, and a paper purporting to be a receipt from

one Thille, thereto appended, (see Exhibit "A A,") and a paper marked "B B."

It seems to me too plain to admit of question, that the letter of Cazeau to his grandson, and the paper thereto appended, are wholly inadmissible in this case for any purpose. The letter contains a denial by Cazeau that he had received any part of the 1,200,000 francs; but surely it cannot be received as evidence in his favor of the truth of his denial. The evidence that he did receive the whole sum is found in the deed of assignment and the collateral instrument executed expressly to explain it. Something more than a mere denial by Cazeau is necessary to destroy the effect of such evidence.

The letter also contains a statement by Cazeau that he had brought Corbeaux before the criminal court, and that "the private writing" *would* be annuled. Was this criminal court a court of record, or a court not of record; and had it jurisdiction, not only in criminal cases, but to annul a "private writing?" The evidence in this case furnishes no means of answering this question. But, whatever was its jurisdiction, and whether it was a court of record or a court not of record, there can be no doubt that its acts must be proved in some other way than by Cazeau's letter. But even this letter does not state that the "private writing" had been, but only that it *would* be annuled.

The paper, purporting to be a receipt from M. Thille to Cazeau, is, at most, an unsworn statement, and for that reason inadmissible. Nor do we know who he is, or whether, in point of fact, he ever gave the receipt. But if it be admitted as evidence, it throws no light upon the point in question. If it refers at all to the deed of assignment, it speaks only of a brief or copy of it, and is silent in regard to its annulment.

The paper marked "B B" is equally unsatisfactory. If it be regarded as a paper properly admissible in evidence in this case, still it proves nothing. It states that Corbeaux offered to Cazeau sixteen documents, which are particularly described; but neither of them is the deed of assignment. It also states that Corbeaux offered to permit Cazeau to withdraw from the office of the minister of foreign relations the documents deposited therein by him and Cazeau; but that he, at the same time, made an express reservation of all his rights arising from the agreements which he and Cazeau had previously entered into. Even these offers, the paper states, were rejected by Cazeau. Nor does it appear that the deed of assignment was in any way referred to in the paper "B B."

Not only is there no sufficient evidence in this case that any legal proceeding, either civil or criminal, was ever instituted by or at the instance of Cazeau against Corbeaux in relation to the deed of assignment, but it nowhere satisfactorily appears that the deed was in Cazeau's possession at any time after it was deposited in the office of the American consul. William Smith, whose affidavit is referred to on this point, is an interested witness; but, even if he were free from all objection, his testimony is wholly insufficient to establish it. He testifies that he believes that John Jesse Reeves brought the

deed from Paris in 1816; but it is evident that he neither knew nor could have known whether such was the fact. He also states that Reeves informed the family that he had placed all the papers which he brought from Paris, and also those which he otained from General Mason, in the hands of General Jones, and he *knows* that, in the fall of 1824, he received the original deed from General Jones. It is plain, however, that how, or when, or from whom, General Jones received it, the witness neither knew nor had the means of knowing. Nor does it satisfactorily appear how, or when, or by whom, it was obtained from the office of the American consul. A difficulty, it seems, arose on this point in the year 1838, and then the affidavit of Wm. Smith was made.—(See Mr. Key's argument.)

Charles L. Cazeau, in his memorial to Congress, dated March 20, A. D. 1818, states that the deed of assignment had been annulled, and was then in his hands. In a letter written by him to the Committee of Ways and Means, dated March 26, A. D. 1818, he states that Francis Cazeau instituted a suit to obtain the annulling and cancelling of the original contract, and by virtue thereof received and recovered it from the office of the consul, where it had been deposited, "the same being *ipso facto* declared cancelled, revoked, null and void." This, he says was done in the year 1809. In proof of it he refers to the papers "A A" and "B B," which have already been noticed. Moreover, whether in point of fact he *then* had the original deed in his possession we have no means of determining. Even if he had in his possession at that time a paper which he regarded as the original deed, to enable this Court to decide whether it was or not, some better evidence is necessary. But even if such evidence existed, proof that he had possession of the origin l deed on the 20th day of March, A. D. 1818, would not be proof th t it was in the possession of Cazeau in his lifetime.

As my opinion is that it is not shown by the evidence that the deed of assignment was in Cazeau's possession after it was deposited in the office of the American consul, I need not consider what would have been the effect of such possession if it had in point of fact existed.

It is a matter worthy of notice, that, notwithstanding Cazeau employed General Mason as his agent to prosecute this claim as early as the year 1809, still he did not, at any time during his life, give notice to the government of the United States or inform his agent that the assignment had been annulled, or even that it had ever had an existence. It seems to me that if the annulment had actually occurred, as has been alleged, it was the natural suggestion of prudence that Cazeau's agent should have been informed of it, and that some reliable evidence of it should have been preserved. Instead of this, however, it is not heard of by General Mason or the government of the United States till after the death of Cazeau, and after the money had been paid to Corbeaux's agent, and after Corbeaux had no longer any interest to contest the point with Cazeau's representatives. And from that time to the present the only evidence which has been offered on this point is that which has been noticed. General Mason, it is

evident, never heard of this assignment till after Stewart had received the money appropriated by the act of 1817. It is stated in the report of the Judiciary Committee, House of Representatives, made March 27, A. D. 1844, that "notice was given the government by Cazeau of his still holding the claim:" but on what evidence this statement was made I have not been able to discover. If he did give such notice, it seems to me that he ought to have made some reference to the deed of assignment and its annulment. But it nowhere appears that this was done. It is also stated in the same report that "it does appear that Cazeau obtained possession of the original papers, which he forwarded to General Mason, of Georgetown, in 1809, to be again presented to Congress." If by "original papers" is here meant the deed of assignment, the evidence does not sustain the report. Whether Cazeau ever parted with the possession of the *papers relating to his claim* or any of them were ever in the possession of Corbeaux, does not appear in the evidence.

It seems to me that the evidence in this case does not show that the deed of assignment was ever annulled. If it never was annulled, then the payment to Stewart was unquestionably valid.

My opinion is, that the petitioner is not entitled to relief.

IN THE COURT OF CLAIMS.

BIGELOW, ADMINISTRATOR OF CAZEAU *vs.* THE UNITED STATES.

GILCHRIST, Chief Justice:

I am obliged, upon examination, to adhere to the opinion originally delivered by the Court in favor the claimant.

I believe that a very great fraud has been perpetrated upon the government of the United States, and upon the persons whose interests are represented by this claimant, by him to whom the money was paid without sufficient investigation by the officers of the treasury. If the United States have paid money to the wrong person, that neither in equity nor in law is an answer to the demand of the person who is entitled to the money. The fraud may be enveloped in such a complication of facts that it may be difficult to expose it and show the rights of the claimant, but that the fraud exists I have a very decided opinion. The material question is one of fact, and that is, was the money paid by the United States to the person entitled to receive it?

The facts upon which the petitioner relies are as follow:

Francis Cazeau was a wealthy merchant, residing in Montreal at the commencement of the revolution, and espoused the caused of the revolted colonies. In the year 1777, in pursuance of a verbal agreement with General Arnold, he procured eight thousand bushels of wheat, and had it ground into flour, and packed for the American

troops, but as the Americans did not invade Canada, and Cazeau was imprisoned for favoring their cause, the flour was ruined, and he lost it with his expenses and commissions.

In the spring of 1777 Cazeau also despatched to Ticonderoga, to delivered to the American general there, three batteaux laden with provisions, &c., and costing four thousand dollars. The Americans had vacated that post, but while the boats were there the Americans made a descent upon the place, and captured and plundered the boats as enemy's property, by which Cazeau lost the value of the supplies and his expenses and commissions.

He also incurred expenses amounting to $276 64 for procuring intelligence for the Americans. .

On the 18th of March, 1784, Congress directed the claims to be settled, with interest from the year 1777, and directing Cazeau's oath to be received in support of other evidence. In the month of July, 1785, Mr. Barber, a commissioner, who was authorized to examine the accounts of Canadian refugees, reported in favor Cazeau's claim. In the month of January, 1817, a committee of the Senate reported in favor of the claim, and a bill was passed for the payment of $42,737 97, including interest, to the legal representatives of Cazeau. But the heirs of Cazeau have never received any part of this money except as hereinafter stated.

The claimant alleges that in the year 1807 Cazeau went to France, and being seventy-eight years old, and broken down by grief and infirmity, was induced by the practice of gross imposition upon him, to execute a power of attorney to one Corbeaux to prosecute this claim for him, and an assignment to Corbeaux of three-fourths of the claim for the nominal consideration of two hundred thousand dollars, none of which, however, was paid to him. The claimant produced in evidence this instrument, the test of which is as follows: "In testimony of the whole of which, the said Francis Cazeau and Francis Corbeaux, jr., have hereunto interchangeably affixed their hands and seals in the city of Paris, on the thirtieth day of November in the year of our Lord, one thousand eight hundred and seven." The instrument purports to be executed in the presence of two witnesses. Then follows a certificate that on the day aforesaid, Cazeau and Corbeaux came before Fulwar Skipwith, commercial agent of the United Stated at Paris, and agent for prize causes, and acknowledged the instrument to be their free act and deed, upon a copy of the instrument. After this is a certificate signed by David Bailie Warden, under the seal of the consulate of the United States at Paris, stating "that the above instrument of writing is a true and perfect copy of the original, executed by the above mentioned individuals, * * * and the said original instrument is deposited in my office, and was there registered in folio 1, the twentieth day of November, one thousand eight hundred and eight." This certificate bears date the 20th of December, 1808. The instrument commences by stating the character and amount of the claims of Cazeau upon the United States and that Congress had adjourned the consideration of them to the month of November, 1802, since which time Cazeau had heard nothing

further concerning them, and stating also that his unfavorable circumstances made it a material object for him to have the claim properly managed, and that his old age and bad state of health made it impracticable for him to attend to it in person. The instrument then stated that it was "indented of two parts," and in consideration of the sum of 1,200,000 francs paid by Corbeaux to Cazeau, Cazeau assigned to Corbeaux three-fourths of his claim upon the United States, or of what may be recovered thereon, and that the better to insure the settlement and recovery of said claims, Corbeaux should be fully and irrevocably empowered to act both in his own behalf and on behalf of Cazeau, and Corbeaux was appointed by Cazeau his attorney irrevocable as far as regarded the three-quarters parts assigned for him, the said Cazeau for his use and benefit, in his name and behalf as far as regarded the one-quarter part of said claims not assigned and conveyed by these presents, and as to what regards the said three-fourths parts, presently assigned and conveyed for the proper use and benefit of Corbeaux, empowering him to receive the same from the United States, with a power of substitution. It was also provided, that if Cazeau should annul the whole or part of the powers relative to his interest, not assigned, he should forfeit the sum of twenty thousand dollars.

On the same day with the execution of the above instrument, a collateral agreement was made between the parties, providing that if Cazeau's claim should not be liquidated within the next two sessions of Congress, Cazeau might re-enter into the exercise of his rights, and might revoke the powers which he had given to Corbeaux, who should not claim of him the stipulated sum of twenty thousand dollars, nor any indemnity whatever.

On the 19th of April, 1808, Cazeau executed an instrument revoking the power of attorney to Corbeaux, as appears by the receipt of M. Thille for the fees for that service. In the month of May, 1808, Cazeau caused criminal proceedings to be instituted against Corbeaux for swindling. It is alleged by the claimant that in consequence of these proceedings the original assignment and power of attorney was surrendered and annuled. This original instrument, it appears, was placed by the heirs of Cazeau, in the year 1831, in the hands of Bigelow, the administrator and present claimant, who now produces it on the trial.

It is in evidence that Cazeau died in Paris in the year 1815.

The claimant alleges that the original instrumennt having been recorded in the American consulate at Paris, in the year 1808, Corbeaux procured a copy thereof, and executed a power of attorney to one James Grubb, in London, who substituted for himself one Joseph B. Stewart. The latter came to this country and induced Congress to pass the act of 1817, and received from the treasury the money thus appropriated.

The claimant alleges that the receipt of the money by Stewart was a fraud upon the heirs of Cazeau, and that the payment of the money by the government to Stewart did not discharge the claim of the heirs upon the United States.

It is contended by the claimant that there was but one original instrument, which had been surrendered to Cazeau.

It is answered by the Solicitor that the instrument purports to be "indented in two parts, and that the teste shows that the parties executed it," interchangeably, thus showing that both Cazeau and Corbeaux kept an original.

When a paper purports to be in two parts, and to be executed interchangeably, these two circumstances, in the absence of all evidence and all considerations to the contrary, undoubtedly show that the instrument is in two parts. But in this case there is no attempt to show, if there were two parts, what became of the part which belonged to Corbeaux, or why it was necessary to procure a copy from the American consulate, and present it at the treasury as evidence, for the money was paid upon the evidence furnished by the copy. The certificate of Mr. Warden states that "the orignal is deposited in my office, and was there registered November 20, 1808" and the certificate bears date December 20, 1808. At what time it was there deposited does not appear, and Mr. Warden speaks of but one *original*. The probability is, that it was placed there by the assent of both parties, and without the assent of both it is not probable that the depositary would have surrendered it. How, then, did it come into the possession of the heirs of Cazeau by whom it was delivered to the claimant twenty-five years ago? Now, whatever effect may be given to the proceedings commenced in Paris by Cazeau against Corbeaux for fraud, or to the act of revocation of the power by Cazeau, the collateral agreement, above referred to, is necessary to be considered in relation to this question. That provides that if the claim should not be liquidated in the course of the next two sessions of Congress, Cazeau might re-enter into the exercise of his rights, and might revoke the power. The claim was not liquidated within the period specified. Subsequently the instrument is found in the possession of the heirs of Cazeau. Does not this afford a strong presumption that the collateral agreement had been carried into effect, and that the instrument had been surrendered by the assent of the parties?

The facts that the instrument is described as "indented in two parts," and as executed "interchangeably," are evidence tending to show that the facts are as they are stated to be, that is, that the instrument was thus executed. But these statements are slight evidence at best. They do not partake of the nature of an estoppel, precluding the parties from averring the contrary. They are simply recitals of a fact, and are to be considered and weighed in connexion with other circumstances. And these statements constitute the only evidence in the case that the instrument was in two parts. The money was paid upon the evidence furnished by a copy. There is no reason to suppose that any other person might not have procured a copy as easily as Stewart, nor that he might not have procured a copy at any time. From the evidence in the case, and particularly from the letter of Mr. Aspinwall of the 25th of March, 1833, it does not appear that the characters of Grubb or Stewart were above suspicion.

They were both clerks in the American consulate at London. Grubb was discharged for misconduct on the 14th of May, 1817. Both of them were in reduced circumstances, and Mr. Aspinwall says that his name was used by Stewart without a shadow of authority or consent. Whatever is said of these persons tends to show that they might have yielded to the temptation and have committed the alleged fraud.

It appears from the evidence that the heirs of Cazeau always resided in Montreal, and were not in affluent circumstances, and that they were not acquainted with Corbeaux, Grubb, or Stewart, that they did not know of Stewart's application to the United States, and never received any portion of the money appropriated by the act of Congress.

I am aware of no principle upon which it can be held that the payment of a debt upon the evidence furnished by a copy of an instrument, without proof of the loss of the original, is a discharge of the debtor. A party is bound to produce the best evidence the nature of the case will admit of. This rule does not need, at this day, any argument or authority in its support. Now, Stewart did not produce the original instrument, which was the best evidence. If there had been two originals, why did he not produce one of them, or account for its non-production? With the exception of the very slight evidence furnished by the recitals in the original, which is produced by the claimant, there is absolutely no evidence whatever which even tends to show that there were two originals. The instrument produced was in the possession of the heirs from 1808 to 1844, and throughout the great mass of the evidence no allusion is made to the existence of another.

But it is clear, also, as I have stated, that the power given to Corbeaux was revoked, and this is sufficient to show the invalidity of the payment to Stewart, whether there were two originals or not. Mr. Warden states that the instrument was deposited in his office and there registered. If there had been two parts, each party would naturally have kept one; but if there had been but one, there would have been a good reason for depositing it with a third person, as both were equally interested in it. It is certainly improbable that in the inception of the proceedings, either party would have suffered the other to retain the original. The production of the original, then, by one party, would raise a strong presumption that it was cancelled; and this, in connexion with the evidence furnished by the receipt of Thille, affords sufficient evidence of the revocation.

The United States, then, stand in this position: They have paid the sum of $42,737 97, which, by law, belonged to the legal representatives of Francis Cazeau, to a person who had no authority to receive it. I need not waste words or reasoning to show that such a payment is not a defence.

In the month of June, 1844, a bill was passed providing for the payment of one-fourth of the sum appropriated by the act of 1817, which was received by the petitioner, with interest from May, 1818. This sum must have been paid upon the ground that one-fourth, at least, of the sum of $42,737 97 belonged to the heirs of Cazeau under

the provisions of the original contract, and that to that extent, certainly, the payment to Stewart was wrongful. The sum allowed by the act 1817, was made up by estimating the amount of the claim at $12,276 64, by adding to it interest from the year 1777, $29,463 60, and by two other items amounting to about $4,000. From the whole sum was deducted a credit and interest of about $3,000. This is clearly an acknowledgment by the United States that interest was due on the original claim. When the act of 1844 was passed, giving to the claimant one-fourth of the sum originally appropriated, interest was allowed on that, constituting a further acknowledgment that interest was due, and admitting also that the payment to Stewart was to that extent wrongful. It would be difficult to conceive of any more distinct acknowledgment that interest was due, than is contained in these two acts.

Was, then, the payment to Stewart wrongful? I think it was, and that it is no answer to the claim now made against the United States. The statement of the amount due, contained in the petition, appears to be correct. It is calculated there to amount, on the 15th June, 1855, to the sum of $110,264 02; to this should be added interest to the 1st of December, 1857, on the sum of $42,737 97, $6,283 85.

It has been argued by the Solicitor that the claim allowed by the act of 1817 had no foundation, and that we should now inquire into its merits. But we are now nearly forty years further removed from the time of the original transaction than the Congress was which passed the bill, and the claim was then examined with the greatest care and deliberation. The act of 1817 appears to me to stand on the same ground with any other law which it was competent for Congress to enact. If we may re-examine this claim and reject it, on the ground that Congress was deceived, it would be difficult, after that, to know where to draw the line. Congress may be deceived by false evidence and representations in the enactment of other laws, as well as those by which money is appropriated. I do not think it was intended to confer upon this Court the power to revise the legislation of Congress; and, without an indisputable authority, and the most imperious necessity, it is a power which I should hesitate long before assuming. But the judgment of the Supreme Court of the United States, in the case of Fletcher *vs.* Peck, (6 Cranch, 87,) covers the whole ground here assumed by the Solicitor. In that case, Chief Justice Marshall says: "It may well be doubted how far the validity of a law depends upon the motives of its framers, and how far the particular inducements operating on members of the supreme sovereign power of a state to the formation of a contract by that power, are examinable in a court of justice. If the principle is conceded, that an act of the supreme sovereign power might be declared null by a court, in consequence of the means which procured it, still there would be much difficulty in saying to what extent those means must be applied to produce this effect. Must it be direct corruption, or would interest or undue influence of any kind be sufficient? Must the vitiating cause operate on a majority, or on what number of

members? Would the act be null, whatever might be the wish of the nation, or would its obligation or nullity depend on the public sentiment?" The chief justice also says: "For a party to pronounce its own deed invalid, whatever cause may be assigned for its invalidity, must be considered as a mere act of power, which must find its vindication in a train of reasoning not often heard in courts of justice." For the reason above stated, I am of opinion that we cannot inquire into the merits of the original claim.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 191.

IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

CHARLES D. ARFWEDSON *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Certified copies of papers from the State Department, transmitted to the House of Representatives.
3. Certified copies of papers from the Treasury Department transmitted to the House of Representatives.
4. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this fourth day of March, A. D. 1858. [SEAL.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Judges of the Court of Claims:

The petition of Charles D. Arfwedson respectfully shows:

That in the year 1849, while he was United States consul at Stockholm in Sweden, Mr. Ellsworth, the United States chargé d'affaires at the same court, was recalled and the legation placed in his charge on the 24th July, 1849, and in conformity with repeated instructions from the Department of State, he corresponded with the Swedish government and with that department upon diplomatic subjects of a delicate

nature (and in a manner entirely satisfactory to the United States government) until the 22d April, 1850, when Mr. Schroeder entered upon the functions of the office. That for these services he asks the salary of a chargé d'affaires for the period he discharged the duties, (under the direction of the State Department) and the Department of State decided that there was no authority to pay without special legislation. He therefore, through his agent, Francis A. Dickins, petitioned Congress. During the 1st session 31st Congress, Mr. Foote introduced into the Senate bill No. 378, to pay his demand in full, but it was not finally acted upon by that body. Again, during the 1st session of the 32d Congress, he presented a memorial to each House of Congress, and an amendment was made to the general civil and diplomatic bill to pay one-half the salary, amounting to $1,681 25, which he received by his attorney and agent. That again, 1st session, 33d Congress, he presented a memorial to each House, asking to be paid the other half of the salary. In the Senate, the Committee on Foreign Relations made a favorable report, (No. 366) accompanied by bill No. 372, which was passed and sent to the House of Representatives; that, in the House of Representatives, the Committee on Foreign Affairs directed their chairman to report an amendment to the general appropriation bill to pay the claim; that when the amendment was offered, it was decided to be out of order, and consequently lost; that the chairman of the Committee on Foreign Affairs of the House of Representatives then took the memorial and papers which had originally been presented to the House of Representatives and requested Mr. Mason, the chairman of the Committee on Foreign Relations in the Senate, to move an amendment to the appropriation bill there, (the Senate having already passed a bill, which was then in the House of Representatives, to pay the same,) but instead of doing so, he presented them including the *old* memorial, which belonged to the House of Representatives and had been inadvertently sent to the Senate, and had them referred to the Committee on Foreign Relations, and afterwards made a report, No. 389, asking to be discharged from the further consideration of the subject; that your petitioner knew nothing of this until after Congress had adjourned; that in the House of Representatives the Senate bill, report, and papers were mislaid, and consequently not reported to the House when they should have been. Wherefore your petitioner (who is sole owner of the claim) asks the favorable consideration of the Court in the premises.

CHARLES D. ARFWEDSON,
By his agent and Attorney,
FRANCIS A. DICKINS.

COUNTY OF WASHINGTON, }
District of Columbia. }

Personally appeared before me, this 20th October, 1855, Francis A. Dickins, who being duly sworn, says that he believes the foregoing particulars to be true.

JOHN D. CLARK, *J. P.*

IN THE COURT OF CLAIMS.

CHARLES D. ARFWEDSON *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

Mr. Ellsworth, late chargé d'affaires of the United States at Stockholm, Sweden, was recalled, and on his recall, by the direction of the Secretary of State, placed the legation in the hands of the petitioner. The despatch from the State Department recalling Mr. Ellsworth, and directing him to transfer the legation to the petitioner, bears date on the 13th day of March, A. D. 1849, and the transfer was made on the 24th day of July, in that year. The petitioner was also at that time the consul of the United States at Stockholm.

The petitioner continued to act as chargé d'affaires *ad interim* until the 22d day of April, A. D. 1850, when Mr. Schroeder, the successor of Mr. Ellsworth, entered upon the duties of his office. During that time, under repeated instructions from the State Department, he corresponded with this government and that of Sweden upon diplomatic subjects of a delicate nature, in a manner entirely satisfactory to this government.

By the act approved August 31st, A. D. 1852, ch. 108, an appropriation of sixteen hundred and eighty-one dollars and twenty-five cents was made "for compensation of Charles D. Arfwedson, consul of the United States at Stockholm, Sweden, for diplomatic services rendered as *chargé d'affaires* at that place, by the instruction of the Secretary of State, from the recall of Mr. Ellsworth to the arrival of Mr. Schroeder, appointed *chargé d'affaires* from the twenty-fourth July, eighteen hundred and forty-nine, to the twenty-second day of April, eighteen hundred and fifty, a period of eight months and twenty-nine days, being one-half of the salary of a *chargé d'affaires*, and in full for such service for the period named."—(10 Stat. at L., p. 89.)

At the first session of the 33d Congress, the petitioner presented a memorial to each house, asking to be paid the other half of the salary. In the Senate, the Committee on Foreign Relations made a favorable report, accompanied by a bill, which was passed and sent to the House of Representatives. In the House of Representatives the Committee on Foreign Affairs, the petitioner states, directed their chairman to report an amendment to the general appropriation bill to pay the claim. The amendment was offered, but rejected, because it was out of order. Afterwards the Committee on Foreign Relations in the Senate made a report, asking to be discharged from the further consideration of the subject.

The petitioner asks the favorable consideration of this Court in the premises.

The act of Congress approved May 1, A. D. 1810, which was in force when the services for which compensation is now claimed were rendered, provides, "that the President of the United States shall not allow to any * * * * * chargé d'affaires a greater sum than at the rate of four thousand five hundred dollars per annum, as a compensation for all his personal services and expenses."—(2 Stat. at L.,

p. 608, ch. 44, § 1.) In this case, Congress allowed to the petitioner compensation at the rate of one-half of the *maximum* authorized by the act of 1810, and declared that it should be in full for the services rendered by him. The compensation to which the petitioner was entitled could not exceed the rate of $4,500 *per annum;* but it might, in the discretion of the President, be less. The President not making any allowance, the matter was referred to Congress, and Congress allowed less. This is conclusive against the petitioner. He has no *legal* right to any greater compensation.

The Committee on Foreign Relations in the Senate, in their report made on the 15th day of May, A. D. 1854, say: "The memorialist acted as chargé d'affaires for a period of eight months and twenty-nine days; for which his compensation, at the usual rate of $4,500 *per annum*, would amount to the sum of $3,362 50. In the general civil and diplomatic appropriation act of August 31, 1852, provision was made for the payment of half that sum to the memorialist, leaving $1,681 25 still due, for which he now appeals to Congress.

"When this application was before this committee during the last Congress, it was believed that the consul fees, together with the amount then allowed, would be equivalent to the full compensation of a chargé, and hence the whole was not then allowed. But it now appears from a certificate of the memorialist, filed with the present application, that the whole amount of consular fees received by him from the 1st of April, 1849, to the 1st of April, 1850, was but $89 75—a sum believed to be barely adequate to cover the expenses of the consular office itself.

"Under these circumstances the committee see no reason why a discrimination should be made against this particular claimant, whilst it has been usual to allow full compensation for such services in other similar cases. They therefore report a bill for the amount of the balance above stated, and recommend its passage."

If Congress acted under the mistake stated by the committee, in making the appropriation of 1852, they doubtless can afford relief. But this Court is not authorized to inquire into that matter. Congress had full power to ascertain and determine the value of the petitioner's services. They did so. Their act is law to this Court. We cannot gainsay it. We are obliged, therefore, to say, that the petitioner has no *legal* title to relief.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 192.

IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

N. AND B. GODDARD, EXECUTORS OF NATHANIEL GODDARD, *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Solicitor's brief.
3. Opinion of the Court adverse to the claim.
4. Numerous papers in this case, referred by the House of Representatives to the Court of Claims, are returned to that House in a separate package.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this fourth day of March, [L. S.] A. D. 1858.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

To the honorable the Judges of the Court of Claims:

The petition of Nathaniel Goddard and Benjamin Goddard, executors of the last will and testament of Nathaniel Goddard, late of the city of Boston, owner of the ship Ariadne, in behalf of themselves and William Parsons, Thomas C. Amory & Co., Samuel G. Perkins & Co., James and Thomas H. Perkins, Thomas Parsons, and Samuel May, all of said city, and together with said Nathaniel Goddard, owners of her cargo, or their legal representatives, respectfully showeth:

That in the month of September, 1812, the said ship Ariadne sailed

from Alexandria, then in the District of Columbia, for Cadiz, in Spain, a neutral port, with a cargo of flour consigned to a mercantile house in said Cadiz composed of native American citizens. That on her direct voyage thither, and on the 15th October, 1812, she was captured by the United States brig-of-war Argus, and brought into the district of Pennsylvania, and there libelled in the district court by the captors as prize of war; that the *sole* cause of her capture, and of her condemnation as hereinafter mentioned, was, that she had on board at the time of her capture a British license; that the petitioners gave bonds, on the delivery of the vessel and cargo to them, in the usual form, and the Ariadne again proceeded on and performed her original voyage, and arrived at her port of destination in February, 1813; that the libel was heard and tried in the district court of the district of Pennsylvania, when, after a full hearing, the transaction was pronounced innocent, and the vessel and cargo ordered to be restored to the petitioners, and the captors to pay damages. From this decree the captors appealed to the circuit court, where the decree of the district court was reversed; and from this decree the petitioners appealed to the Supreme Court of the United States, where, at the term of that court in 1817, the decision of the circuit court was affirmed, and a final decree of condemnation passed on the vessel and cargo; whereupon the petitioners and their sureties paid the amount of their bonds, to the end that distribution might be made to the United States and the captors according to law. That there was no suggestion or suspicion that the property belonged to the enemy, or of its having been shipped with intention of promoting his views or object; that the whole offence, if any there was, consisted in having said license on board said vessel; that they had no intention of violating any law of their country, nor did they know or believe that having on board said vessel said license was in violation of the law of the land or any principle of public or private duty; that this opinion was entertained in common with other citizens, and particularly expressed by the most distinguished functionaries of the government, the then President and Attorney General of the United States; that if they erred it was unintentional, and the penalty of sequestration of their property was too severe an infliction for the violation of an unwritten rule of conduct, at that time never promulgated by the government or known to the citizen.

That after her capture as aforesaid by the Argus, a prize-master was put on board of the Ariadne, with orders to take her into the first port she could make in the United States; and on the passage she fell in with two British cruisers, viz: the sloop-of-war Tartarus, and the brig Calibre, and escaped from them after a strict examination, by making use of the very license for having on board which she was seized and condemned. Your petitioners therefore pray the judgment of this honorable Court for the portion of the proceeds of said ship and cargo which was paid into the treasury of the United States. Your petitioners are the sole owners of said claim, which was brought before Congress soon after the decree was passed; and in 1818, Mr. Lowndes, of South Carolina, chairman of Ways and Means, after having received the opinion of Mr. Crawford, Secretary of the Treasury,

made a favorable report thereon, but no bill was passed. In 1824 the petition was again presented and referred, but no further action was had. In 1837 a favorable report was made in the House of Representatives, but the bill reported did not pass. In 1846 another favorable report was made, and the bill for relief passed the Senate. In 1854 a favorable report was made in the House of Representatives, but the bill not having been reached, it was by the resolution of the House referred to this honorable Court.

A. H. LAWRENCE,
Attorney for Petitioners.

DISTRICT OF COLUMBIA, }
Washington County. }

On this fifth day of July, A. D. 1855, before me, a justice of the peace in and for said county, personally appeared James Young, the agent of the within named petitioners, and made oath that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

J. H. GODDARD, *J. P.*

IN THE COURT OF CLAIMS.—No. 35.

THE EXECUTORS OF NATHAN GODDARD *vs.* THE UNITED STATES.

Solicitor's brief.

States that the Ariadne sailed from Alexandria in September, 1812, to Cadiz, in Spain, and was captured by the United States brig Argus; was libeled, &c. Decree of the Supreme Court in 1817; condemned because she had a British license. States owners had no intention of violating the law of the country, and did not know or believe that having said license was in violation of the law or any principle of public policy. This opinion is entertained by many citizens, particularly by the President and Attorney General. After the Ariadne was captured, petition to Congress and report of Mr. Lounds, in 1818. In 1837, favorable report of the House of Representatives, and bill did not pass. In 1846 another favorable report, and a bill for relief passed the Senate. In 1854 another favorable report.

Points.

This case has already been decided in the Supreme Court.—(See Ariadne, 2 Wheaton, 143; see page 144, Chief Justice calls for further proof to distinguish this from former cases of license; see Justice Washington's opinion, page 147–'8.) This decision covers every point on the question of legality or illegality attempted to be made by the petitioners.—(See argument of Mr. Pinkney in the case of the Aurora, 8 Cranch, 213, who shows that the principle on which the Supreme Court decided the case of the Ariadne was sanctioned by the British admiralty courts as far back as 1704 and 1707; see also the Julia, 8 Cranch, 181; Aurora, 203; Hiram, 444, and 1 Wheaton, 440; the Cale-

donia, 4 Wheaton, page 100; the Hoop, 1 C. Robinson, 196 to 201; 1 C. Robinson, 11, 13; 4 C. Robinson, 83, 84.

2. As to the allegation that this law was unknown to the adventurers for this ship: Ignorantia juris, &c.

3. Even if the individuals filling the offices of President and Attorney General held the opinions charged in the petition, yet this gives no color of claim against the United States, for it is not alleged those officers did any official act, or had authority to do any official act, which could bind the United States to indemnify the adventurers for loss sustained by embarking in this illegal trade. The trade was not engaged in for the benefit of the United States, but at the private speculation of the parties, who took all the profits to their own use, and who should take all the hazard.

DAN'L RATCLIFFE,
Assistant Solicitor Court of Claims.

IN THE COURT OF CLAIMS.

NATHANIEL AND BENJANIN GODDARD, executors of Nathaniel Goddard, late of the city of Boston, owner of the ship Ariadne, on behalf of themselves and others, all of said city, and, together with said Nathaniel Goddard, owners of her cargo, or their legal representatives, *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

This cause was referred to this Court by the House of Representatives.

The petition, so far as it need be stated, is as follows: That in September, 1812, (war then existing between the United States and Great Britain,) the ship Ariadne sailed from Alexandria, then in the District of Columbia, for Cadiz, a neutral port, in Spain, with a cargo of flour; that on the 15th of October, 1812, the ship was captured by the United States brig-of-war Argus, and taken into the district of Pennsylvania, and there libelled in the district court of the United States; that the vessel and cargo were ordered to be restored by said court, but the circuit court in said district reversed the decree, and the vessel and cargo were condemned; that the decree of the circuit court was affirmed by the Supreme Court of the United States; that in consequence of said decree of condemnation, certain bonds, which had previously been given by the claimants upon the delivery to them of the vessel and cargo, were paid, to the end that distribution might be made to the United States and the captors according to law. The petition also states that the sole cause of the capture and condemnation was, that the ship had on board, at the time of her capture, a British license.

The prayer of the petition is for a judgment for the portion of the proceeds of said ship and cargo which were paid into the treasury of the United States.

It is very clear, upon the face of the petition, that the claimants

have no remedy in this Court. The said decree of condemnation of the ship and cargo was affirmed by the Supreme Court of the United States, on the ground that the ship, at the time of her capture, was sailing under a license of the enemy.—(The Ariadne, 2 Wheaton, 143.)

The money paid into the treasury of the United States, in consequence of said decree of condemnation, must be considered as legally belonging to the United States.

We cannot go behind the decree of a court of competent jurisdiction.

This case is, therefore, reported to Congress as one in which, on the face of the petition, the claimants have no *legal* demand against the United States. The case is one that addresses itself entirely to the discretion of Congress.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 193.

IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

BENJAMIN COZZENS, TRUSTEE, *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Exhibits filed in the case by the claimant and transmitted to the House of Representatives.
3. Certified copies of letters, &c., from the Treasury Department, transmitted to the House of Representatives.
4. Depositions in the case filed by the claimant.
5. Claimant's first brief.
6. United States Solicitor's brief.
7. Claimant's second brief.
8. Opinion of the Court, adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington, this fourth day of March, A. D. 1858. [L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable Court of Claims of the United States, now holden at the city of Washington:

The petition of Benjamin Cozzens, of Providence, in the State of Rhode Island, &c., late cotton manufacturer, respectfully shows:

That in the month of March, 1845, I purchased a vacant cotton mill at East Greenwich, county of Kent, in this State, being already owner of two cotton mills at Warwick, in the same county. That the said mill at East Greenwich required large additions and alterations and to be fitted with new machinery, tools, &c., and the machinery in the

Warwick mills was much worn and required to be replaced with new and I resolved to do both in the best manner, and that such of the machinery and tools as I could not obtain to advantage in this country should be imported from England. To carry out these views I required the aid of an experienced and competent man in planning the additions, &c., and in importing and setting up and operating the machinery and tools. My inquiries led to an introduction to Jeremiah S. Young, esq., a highly respectable and intelligent gentleman then residing in the vicinity of Lowell, who had experience and skill in machinery. We commenced a negotiation, in which Mr. Young proposed, first, to plan the additions and alterations of the mills and aid in contracting for such of the machines as were to be obtained in this country, and then go to England and contract for the portion of the machinery and tools we intended to import; and, after the execution of these contracts was well under way, and arrangements made for shipping the machinery, that he should return to this country and set up and put said machinery in operation in said mills.

It was also agreed between me and Mr. Young that he should take an interest in said mills and machinery, and I duly conveyed the same to him accordingly.

Mr. Young sailed for England in April, 1845, and there executed the arrangement as agreed on, and soon afterwards, in the same year, arrived in the United States and brought a portion of the machinery in the same ship with himself. The residue of said machinery, tools and implements were received by sundry vessels, nearly all at New York, per the schedule hereto annexed. By Mr. Young's aid and advice in part, assisted by the ten mechanics and the operatives he sent out, mostly in the same vessels with the machinery, the greater part of the same was put in operation in said mills.

The understanding with Mr. Young was, that the machinery and tools he should import should be the newest and most improved, such as could not be obtained in this country, and such as would serve for models or patterns to be copied by our machinists. This course was fully carried out by him. The four pairs of Potter's patent self-actors were entirely new in this country, but have since been copied by one or more large and respectable manufacturing corporations. The Smith's patent self-actors were upon the latest and most approved patent in England, and such as were not already in this country. The drawing frames and roving frames (the latter called fly frames and slubbers) were of a new construction, and had important improvements connected with them, and they have served as models and been extensively copied by our best machinists. The tools and engines were also of a new construction. In case of the principal of said machines, I paid six pence sterling per spindle on some 12,000 spindles for the English patent right.

The extent to which the above described machines have served as patterns or models, and been copied in this country, seems to show the wisdom of the tariff act of 1842, in admitting them free of duty. Believing such to be the true construction of the 9th section of said act, and being confirmed in this by finding that many other manufacturers, about the same time, imported machinery and tools, which,

on the same construction of the act were admitted free by the collectors, under instructions from the Treasury Department, as documents therein and in the custom-houses in New York and Boston will show, I claimed that said machinery, &c., should be admitted free. But this being refused by the collectors, I paid from my own funds, according to my understanding with Mr. Young, the duties on several of the first importations, per the schedule annexed, under protest. On the 27th day of March, 1846, I addressed a memorial to the Treasury Department, stating the foregoing facts, and requested that an order might issue for refunding to me the amount of duties thus paid by me upon the importations of said machinery already made, and that the shipments then to arrive might be admitted free. The last part of my memorial was granted, and several shipments, constituting a considerable part of said machinery, were admitted without payment of duty; but why the same officers refused to refund the duties already paid, under the same circumstances, I never could learn, except that my agent supposed it was on account of the low state of the treasury at that time. I made subsequent applications to the same effect without success; but received no written reply till December 12, 1853, when the present Secretary of the Treasury rejected the last on the grounds that the question was made in 1846, and decided against me, and that, in his opinion, the machinery was by law liable to pay duties, per his letter of that date. The friend, (Governor Steele, of New Hampshire,) through whom the application was made at this time, still did not despair of success, in some direction, in a claim in his opinion so just; and this fact, and the hope I have always entertained that the department would ultimately allow the claim, are the causes of the delay in prosecuting it.

By a deed of assignment, with power of attorney to collect the claim, bearing date January 1, A. D. 1856, I transferred the same to Samuel D. Cozzens, esq., of New York, as trustee to my wife, Mary S. Cozzens, in consideration of a sum of upwards of three thousand dollars of trust funds belonging to her, which I had received; and this claim is now prosecuted for her benefit accordingly, by me and her said trustee.

Wherefore the undersigned pray your honors to award to the said Samuel D. Cozzens, trustee as aforesaid, the amount of the duties so paid and specified in said schedules, with interest, if such is the rule of the Court; and, as in duty bound, will ever pray.

BENJ. COZZENS,
SAMUEL D. COZZENS, *Trustee.*

Schedule of duties paid under protest by Benjamin Cozzens on machinery tools, and implements, imported in the following vessels, viz:

Ship Empire, in New York, September 3, 1845	$636 40
Ship Ohio, in New York, October 1, 1845	467 00
Ship Roscius, in New York, October 31, 1845	440 60
Ship Sea, in New York, November, 1845	1,866 50
Ship Sheridan, in New York, January 17, 1846	427 40

Ship Indiana, in New York, March, 1846	$494 23
Ship Shakspeare, in New York, March, 1846	16 84
Steamer Arabia, in Boston, December 26, 1846	16 84
	4,393 81

BENJ. COZZENS.

I, Benjamin Cozzens, of Providence, on oath, declare that the facts stated in my petition of this date to the Court of Claims of the United States, by me signed and hereto annexed, are true to the best of my knowledge and belief.

BENJ. COZZENS.

PROVIDENCE, *April* 23, 1856.

Subscribed and sworn to before me this twenty-third day of April, 1856.

LEVI SALISBURY,
Commissioner Court of Claims.

COURT OF CLAIMS OF THE UNITED STATES, WINTER TERM, 1856–'57.

BENJAMIN COZZENS, Trustee, *vs.* UNITED STATES.

Petition for return of duties paid under protest, &c.

The petitioner first refers to his transfer to the beneficiary named in the petition, in the case and the depositions of Edward P. Paterson and Russell Vaughn, to prove the same and consideration.

For proof of the importations, entries at custom-house, invoices, payment of the duties, protest, &c., the petitioner refers to the deposition of Mr. Leffingwell and exhibits with the same.

The petitioner claims that the machinery referred to in his petition should have been exempted from duty.

First. On the ground that the same were "implements and tools of trade, occupation or employment of persons arriving in the United States," according to the fourth clause of the ninth section of the tariff act of 1842.

Second. On the ground that the same were "models of machinery, inventions and improvements in the arts," according to the fifth clause of the same section of said act.

See also the same provisions in the act of 1846, with provisos added to prevent the construction which had been given to the act of 1842.

And the petitioner contends that both of these grounds are substantiated by a fair and liberal construction of the tariff act and the testimony of his witnesses in the case, viz:

The depositions of Jeremiah S. Young, Mr. Leffingwell, Thomas J. Hill, Sanford Durfee, William C. Davol, Edward P. Paterson, and exhibits with the same, and the custom-house documents annexed,

including some recently filed as to importations per Devonshire, Thunnarya, and Samuel Thipps.

Also, by the construction given to the act by the Treasury Department at the time, in the several instances referred to in the petition, as well as many others—as shown by the depositions before referred to, and the papers annexed to same, and also the depositions of Hon. John H. Steele, Hon. Henry W. Gardner, and the petitioner's own case, the largest portion of his machinery having been held to be exempt from duty at the time.

Also, the documents in the several cases above referred to invoked from the Treasury Department, including those referred to in my first and second calls.

The petitioner claims interest on the sums paid, the government having had the use of his money for so long time.

BENJAMIN COZZENS,
Trustee, Pro Seipse.

PROVIDENCE, R. I., *June* 23, 1857.

IN THE COURT OF CLAIMS.

ON THE PETITION OF BENJAMIN COZZENS FOR TRUSTEE OF MRS. MARY S. COZZENS.

Brief of the United States Solicitor.

This is a claim for the return of duties alleged to have been paid under protest on machinery, imported in various vessels, for a cotton mill at East Greenwich, in Rhode Island. As to the payment of the duties, and the protest against the payment thereof in the several importations, I believe the evidence sustains the allegations of the petitioner, with the inconsiderable variations shown in the testimony of Leffingwell, excepting those with respect to the importations on the ship Empire and the steamer Arabia, with respect to which there is no proof of protest; whilst, with respect to the claim on account of the Indiana, Mr. Leffingwell shows that the duties were refunded on an affidavit made by Mr. James Young.

The claims to be considered are, therefore, those for duties paid on the importations by the "Ohio," "Roscius," "Sea," "Sheridan," "Shakspeare," and "Southerner."

The grounds upon which the petition puts the claim is twofold: 1st. That the importations were duty free, being models of machinery, made free by the 6th subdivision of sec. 9 of the act of 1842, vol. 5, p. 561. 2d. That they consisted of "implements and tools of trade, occupation, or employment of persons arriving in the United States," free by the 4th subdivision of that section, p. 460.

I.—1. If the articles had been in fact models, the claim to refund the duties on that account could not be supported, because the entries were all of "*machinery*," not of "*models of machinery*."—(Bond *vs.* Hoyt, 13 Peters, 263.)

2. If the party be permitted, after such a lapse of time, to prove the fact that his importations were of *models*, and so either to change or explain his entry, he would not be entitled to recover; because no objection of this kind was then made to the payment of the duty. His protest alleges another ground for exemption.

3. The facts in proof show that the importations were not models, and were not imported to serve as models, but to fit up certain cotton mills owned by claimant, who was a manufacturer and not a machinist. The definition of a model in Bouvier, is "a machine made on a small scale to show the manner in which it is to be worked or employed;" and this evidently is what is contemplated by the act of 1842. It may be true, as Mr. Hill, one of the claimant's witnesses, says, that it is preferable to have a working machine of full size as a model. The question is not what is preferable, but what the law admits, and about this there can be no misapprehension; for whilst it is true that a working machine may serve as a model, it is not what we understand by the phrase.

But there is nothing to show that this machinery ever served the purpose of models.

Mr. Hill is asked, question 3: Have you copied any of said machines *similar ones?* He answers, "I have copied the fly frames and slubber, so called, made by Higgins & Son, being *the same kind* imported by Mr. Cozzens in connexion with Mr. Young."

Mr. Duval says, in answer to question 1, he went with Mr. Young, in 1852, to see Cozzens' mill, having previously contracted with Young to build some self-acting mules like those used by Cozzens; and accordingly he did build some. In answer to question 2 he says, he had previously seen similar machinery in this country.

This is all the testimony going to show that any part of the machinery was used as a model. It does not prove that any part of it was so used; and if it did, what was the value of the part so used, as compared with the whole, does not appear.

It would require, I suppose, but little of the machinery with which the whole mill was fitted, to enable a machinist to make similar fly frames, &c.; only specimens of it would be required for such a purpose.

II. But the protest, the affidavits of Young on which portions of the machinery was admitted free of duty, and the cases of Messrs. Allen & Son, and other instances relied on as precedents to show that the machinery in question onght also to have been admitted free, put the right on the ground that it consisted of "implements and tools of trade, occupation, or employment of persons arriving in the United States."

This language does not apply to the importations in question.

1. Implements and tools of trade do not mean machinery. The language used in this clause of the law is the same found in most of the States statutes designating the articles which shall be exempt from execution and attachment, which have been construed by the courts in a number of cases to apply only to implements of handicraft, and not "as designating complicated machinery, which, in order to produce any useful effect, must be worked by combining several distinct

parts, or several pieces, the aid of more hands than one being necessary to perform the operation."—(Danforth *vs.* Woodward, 10 Pickering, 427; see also to same point, Howard *vs.* Williams, 2 ib., 83; Buckingham *vs.* Billings, 13 Mass., 84; Spooner *vs.* Fletcher, 3 Vert., 133; Batchelder *vs.* Shepleigh, 1 Fairfield, 135; Kelburn *vs.* Denning; 2 Vert., 404; Daily *vs.* May, 5 Mass., 313.)

The meaning given in these decisions to the words "implements," &c., occurring in the attachment laws of the States, is evidently the true meaning of the words in the clause under consideration; because the policy of both laws is evidently the same, to enable the poor handicraftsman and mechanic to earn his living by allowing him the instruments with which he labored; and it is obviously an abuse of such a provision to apply it to the machinery of a cotton mill of which the proprietors are capitalists; and this construction is confirmed by the context, for the exemption applies only to the wearing apparel, tools of trade, &c., of persons *arriving* in the United States. Now the law does not expressly say that the persons must come in the vessels with their wearing apparel, tools of trade, &c., and perhaps was purposely put in that form so as not to require taxes to be paid by emigrants who should by accident be separated from their baggage and tools; but it is nevertheless evident that the clause was intended only to exempt the baggage, tools, &c., which passengers and emigrants generally carry with them; and it is an abuse of terms to apply the clause to shipments of machinery for a cotton mill to a resident in Providence, R. I., by an agent who was sent to England for the purpose of purchasing them, and who *arrives* after some of the shipments and before others. On such a construction the law would seem to have been framed to promote travelling among our manufacturers, or their clerks and agents. If they should stay at home and order their machinery, and not *arrive* at home about the time the machinery arrived, they must pay duties but if they go abroad themselves, or send an agent who takes care to *arrive* at the proper time, and swears that the machinery is his tools, &c., he will be allowed the duties to pay the expenses of his visit, or perhaps as compensation for making such an oath. That such a construction was ever made in the instances adduced by the claimant, can serve only to surprise the court, and to explain the legislative construction given to this clause in the act of 1846, vol. 9, p. 49, as follows: "Provided that this exemption shall not be construed to include machinery or other articles imported for use in any manufacturing establishment, or for sale." All the instances relied on by the claimant were recent, when the legislature thus emphatically pronounced the construction on which they had been allowed an abuse, and put an end to it. There is therefore no proof of usage in such a construction.

2. The exemption extended only to the tools, &c., of persons *arriving* in the United States. There is no evidence that the claimant has ever been abroad, and he is the party for whom the machinery was bought.

Question 5 to Mr. Young is, "Were you interested in those mills at the time of the importation?" He answers: "That is evinced by the papers which I have certified and annexed hereto." There is no

paper annexed showing the interest of Mr. Young in the articles. In B, a letter addressed by claimant to the Comptroller, he says Young had had an interest in said mills, for which conveyances had been executed, but the conveyances are not produced. Against any inference from this assertion, as to the property being in Young, we have all the invoices in Cozzens' name only, and the protests by Randell H. Green describes himself as the agent of Cozzens, by whom, he says, the machinery was imported, it having been "selected for him by his agents in England."

And the money claimed belonged to and was paid by Cozzens, not by Young. This is stated in the petition: "I paid from my own funds, according to my understanding with Mr. Young," says Mr. Cozzens; nor did any of the protests assert that the property taxed, or the money paid for duties, belonged to Young; and yet it is only by considering it as the property of Young that there is any pretence of claim. He was the only person *arriving* in the United States who had any connexion with the property, and it is only to property of persons arriving in the United States the exemption extends. But he never pretended to have a claim.

Some stress is laid on the allegation that the machinery was of a new and useful kind, and therefore calculated to promote successful manufacturing in the United States; but this is a merit not considered in the law; indeed, the law contemplates the exemption of old things rather than new.

In conclusion, it may be observed that if the claimant had been advised by counsel that the duties were wrongfully exacted he would probaby have sued the collector to recover the money long since.

M. BLAIR.

APPENDIX.

I have received the following papers (numbered 1, 2, 3, 4, and 5) from the treasury since the foregoing brief was written, which, as showing the views of Secretaries Walker and Guthrie on the questions presented here, I think it proper to append. They show, conclusively, that the construction of the act of 1842 contended for by the claimant never had the sanction of the department.

M. B.

No. 1.] TREASURY DEPARTMENT,
December 12, 1853.

SIR: My attention having been called by the letter of John H. Steele to the claim of Benjamin F. Cozzens, of Providence, in Rhode Island, for return of duty on tools and machinery imported by him, and reference made to J. N. Barker, whose report exhibits the facts, I am of the opinion that, under the tariff, the tools and machinery were liable to duty, and that the precedent cited of importation free of duty was against law and not binding, and that the subsequent practice has been in accordance with that I consider the correct construction of the law; besides which, the question was made in 1846

and decided against Mr. Cozzens, and it is not my practice to revise such proceedings of my predecessors.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

H. J. REDFIELD, Esq.,
Collector of the Cus'oms, New York.

No. 2.]—REPORT SUBMITTED TO THE SECRETARY OF THE TREASURY, DECEMBER 10, 1853.

Claim of Benjamin Cozzens, of Providence, R. I., presented by John H. Steele Esq., for the return of duties paid on MACHINES.

This claim is for return of duties exacted on machines or machinery imported in 1845, on the ground that they were "models of machinery," and other inventions and improvements in the "arts" exempted from duty by article 6, section 9, of the tariff act of 1842.

This case appears to have been first presented on the 20th of July, 1846, by letter from the collector at New York, and an adverse decision was given on the 8th of October, 1846, in conformity with circular instructions of the department of 19th June, 1846, in which it is declared that "practical or working machines, whether imported whole or in separate parts, if fit for and intended to be used in factories, workshops, laboratories, or elsewhere, cannot be admitted to free entry under the provisions of the tariff act of 1842, as 'models of machinery,'" and that the terms *instruments, implements, and tools of trade,* as employed in the said act, do not include machines or machinery of any kind not used exclusively by hand by the imigrating artisan, &c. A provision to the same effect was inserted in the tariff act of July 30, 1846.

A case is referred to by Mr. Steele, on behalf of Mr. Cozzens, decided in 1835, in which machinery fit for use was admitted to free entry under the sanction of the department. Such a case is found, but it appears it was attended by peculiar circumstances—that is, where the machines or tools of trade were procured abroad in person by the applicant. Beyond this it is believed the department has not gone in any instance, and as early as June 6, 1846, the ground was taken, since uniformly maintained, that no working machine, except when worked by manual power exclusively, is entitled to free entry as "a model of machinery, or implement, instrument, or tool of trade."

In the present case the machinery was not, as is understood, procured abroad by the person claiming, as owners, return of the duties paid, but by an agent. Such cases occurring under the acts of 1842 and 1846 have always been considered by the *Secretary*, so far as they are known to me, as importations liable to the charge of duty.

Respectfully submitted,

J. N. BARKER.

TREASURY DEPARTMENT,
December 10, 1853.

No. 3.] TREASURY DEPARTMENT,
June 6, 1846.

SIR: The following applications have been made to this department for the return of duties illegally exacted:

By John D. Ward, of Jersey City, for the return of duties paid on the importation into the port of New York, in October, 1845, of a "Woodworth's patent planing machine."

By Thomas B. Shepard, of Providence, Rhode Island, for the return of duties paid on the importation into the port of New York, in May last, of a "platina retort."

The ground of claim in both cases is, that the articles are exempt from duty under the 9th section of the tariff act of 1842, either as "models of machinery," or "tools of trade."

In reference to the provisions of law above mentioned, it has been decided by this department:

1. That the term "models of machinery" does not, within the meaning and intent of the act, comprehend working machines fully prepared and ready for use.

2. That the term "tools of trade" cannot embrace machines or apparatus belonging to, and imported by or for, persons already established residents of the United States. Although by a liberal construction of law in respect to the effects of emigrants coming into the United States, the exemption from duty may, in particular cases, be extended where the special circumstances warrant it, to articles intended in good faith to be brought with the person to whom they belong as tools of trade, but prevented from being so brought by accident, or other cause deemed sufficient by the department to bring the case within the rule allowing exemption.

In the case now presented, it appears, from the statements submitted, that the several articles in question were manufactured in Europe, having been shipped to this country on the orders of the respective importers while they were established residents of the United States, the said machines or apparatus being in condition for efficient use in the manufactory or establishment for which they were severally imported.

Under these circumstances the department cannot perceive any ground on which either case can be taken out of the class of importations of foreign manufactures liable by law to the payment of duty, and therefore approves of the course pursued at your office in declining to admit the articles in question to free entry.

The entry in the case of the platina retort is herewith returned to the files of your office.

Very respectfully, your obedient servant,

R. J. WALKER,
Secretary of the Treasury.

C. W. LAWRENCE, Esq.,
Collector of the Customs, New York.

No. 4.] TREASURY DEPARTMENT,
October 8, 1846.

SIR: In reference to the case presented by L. Pearson, attorney for Benjamin Cozzens, the subject of your letter of the 30th July last, I have to remark that the instructions to you dated the 6th June, followed by the circular instructions of the 19th June, 1846, were intended to correct the erroneous practice under which "machinery" had been, in some instances, admitted to free entry. The true construction of the law being, in the opinion of the department, as given in those instructions, there is no legal authority in the department to direct the admission to entry of the articles in question without the payment of duty, or the refunding of duties already paid on the same.

Very respectfully, &c.,

McC. YOUNG,
Acting Secretary of the Treasury.

C. W. LAWRENCE, Esq.,
Collector of the Customs, New York.

No. 5.] CIRCULAR TO OFFICERS OF THE CUSTOMS.

TREASURY DEPARTMENT, *June* 19, 1846.

SIR: It being found that frequent attempts at evasion of the payment of the legal duties chargeable on certain descriptions of foreign manufactures have taken place, consequent on a practice heretofore prevailing of admitting such articles, under peculiar circumstances, as *models of machinery* or *tools of trade*, it is deemed expedient to state for your government that it has been decided by this department, after mature deliberation, that *practical* or *working machines*, whether imported whole or in separate parts, if fit for, and intended to be used in factories, workshops, laboratories, or elsewhere, cannot be admitted to free entry under the provisions of the tariff act of 1842, as "models of machinery," and that the terms instruments, implements, and tools of trade, not used exclusively by hand by the emigrating artisan, handicraftsman, or other person, to whom they belong, and by whom they have been actually used as his proper instruments, implements, or tools of trade, occupation, or employment.

R. J. WALKER,
Secretary of the Treasury.

IN THE COURT OF CLAIMS.

ON THE PETITION OF BENJAMIN COZZENS FOR TRUSTEE OF MRS. MARY S. COZZENS.

Petitioner's closing argument.

It *now* appears that the duties on the importation by the Indiana were refunded *to Mr. Young, on his* affidavit stating the same facts

upon which the duties were also refunded in three other cases, and upon which the present claim is founded, the several shipments being one entire lot of machinery, all imported under the same circumstances. These repayments were made under the direction of the Treasury Department.

There is no other question between the claimant and the Solicitor, as to the amount, if any, to be recovered, except that the custom-house officers did not find the protests upon payment of the duties upon the importations per Empire and Arabia. Doubtless those documents are there, and it has been decided by the United States circuit court, in New York, very recently, in the case, Drake *vs.* Redfield, November 17, 1857, that where it appears that the duties were paid in order to obtain possession of the goods, it is substantially sufficient. That the duties in the present case were thus paid is shown by all the circumstances, such as the contract by which Mr. Young was to put up the machinery and start the mill as soon as possible; that there are regular protests found in reference to all the other shipments of machinery for the same mill; that three or four of the largest shipments were admitted free; and the whole was followed up by an early demand upon the treasury to refund the duties exacted in the case of the Empire, as well as of the other vessels now in question, *as having been paid under protest.* And in the case cited by the Solicitor from 13 Peters, it was held, that "notice that the party intends to contest the claim for duties is equivalent to a protest." Surely, the above circumstances were sufficient for such notice. The case taken in connexion with the several protests, which immediately followed, seems also within the *spirit* of Marriott *vs.* Blune, (9 How. 636,) though the same reason for a protest does not apply to this case in this Court as to actions against collectors.

1. The first ground of the present claim is, that the different "machines, engines, lathes, and mechanics' tools," were "*instruments, implements, and tools of trade, occupation, or employment of persons arriving in the United States.*"

2. To show that the above language does not embrace the different machines used by a man, in his trade, or occupation, or employment of a manufacturer, several cases are cited by the Solicitor, in his brief, showing what construction has been given to the very different and more limited language designed to protect from attachment the "*tools* of a debtor, *necessary* to his trade or occupation." The cases and objects of the two laws are wholly dissimilar. "The object and intention of these State enactments were to make a humane provision for the poor"—(10 Pickering, 428, in the case cited.) The object and intention of the act of Congress were to encourage, on a broad and liberal scale, the importation of the articles in question. To infer this object and intention in the latter case from those of the former, would be to take an extremely narrow view of the subject—a view wholly unworthy of a great and liberal government. Had the machinery in question been attached in a suit against the claimant, and had it been decided by a Rhode Island court, that it was not exempt from attachment, as "the tools *necessary* for his trade or occupation," this Court would *hardly have felt* bound by the decision as applicable to this case. Yet,

in one of the cases cited by the Solicitor, (Howard *vs.* Williams, 2 Pickering, 89,) it was held, that "the exemption is not limited to the tools used by the tradesman, *with his own hands*, but composes such, in *character* and *amount*, as are necessary to enable him to *prosecute his appropriate business* in a *convenient* and *usual* manner, &c., &c.

As to the criticism of the Solicitor upon the more particular intentions of Congress, in this enactment, the Court will probably deem it more safe to give a *fair* and *liberal* construction to the statute, as it is, but can hardly fail to consider that the great object was to encourage both the *immigration* of *persons*, of all *professions from abroad*, with the mechanical appliances, by which their business is conducted, and the importation of all such mechanical appliances by American citizens of all professions, who may choose to bring them from abroad; and it seems plain, at least, that in regard to the latter class, Congress could not mean to encourage the importation of only such implements as they use with their own hands. Few men would go to Europe for such an object.

The term intended to designate the objects of the legislative bounty is the *most general* that could be used—not foreigners, nor citizens; not artisans, nor mechanics; or members of any other trade or professions—but "persons *arriving* in the United States," everybody who should *come here*, no matter where he comes *from*, or went *from*.

Again: The "instruments, implements, and tools of *trade, occupation, or employment* of all such persons, seems as general as can be. If a single artisan, mechanic, or manufacturer of any kind, can come with his mechanical appliances, to use with his own hands, why should not the artisan, mechanic or manufacturer, who, in his trade, occupation, or employment, employs other men, also, come with his mechanical appliances—"instruments, tools, and implements;" such as the spinner, the weaver, the calico printer, the steam engine or locomotive builder, the cotton, woolen, worsted, hemp or flax manufacturer, &c , the employer as well as the employed? What better right had a foreign artisan, or a domestic one returning home from abroad, to bring his tools, implements, &c., than Governors Allen or Steele, or Mr. Green, or Mr. Maeldrum, or Ibbottson, or Mr. Young, to bring theirs? *At any rate there is no language in the act to authorize the distinction.*

From the declaratory act of 1846, I draw the opposite inference from that drawn by the Solicitor. If Congress had deemed the construction given by the different officers of the government, in the very numerous instances referred to, only a portion of which appear in this case, so clearly wrong, as the Solicitor does, they *would have left it to the courts to apply the proper construction.* Instead of "pronouncing" the construction which had prevailed "an abuse," or "evasion," by the proviso now annexed, they show they deemed there had been warrant for the construction of the former act.

Accordingly, we find the United States circuit court in New York, did give the construction now claimed to this act, in the case of Thomas Rogers' fly frame, (the same kind of machine as a large portion of the claimant's.) See letter of the Comptroller of September 5, 1845, in the case.*

*The claimant's call on the department embraced this decision, but it is not furnished, and probably, could not be found.

2. It is next objected, that it does not appear that Mr. Young, who was "the person arriving in the United States," was interested in the articles, and no conveyances are annexed. Yet the sworn petition states, that such "conveyances to Mr. Young were executed," and Mr. Young, in eight or ten affidavits made at the time and in the cases as well as his deposition now, *swears* to *this interest*. This was the only evidence that was required by the department, in the four cases where the duties were refunded to Mr. Young and the claimant, and similar to that in all the cases mentioned in the documents invoked from thence, and was all that the claimant deemed needful, though further evidence might have been adduced, and still may be, if required. As to the entries being in the claimant's name, the agents who made them used such names as they chose. Mr. Pearson, an agent of the parties, entered some in his own name, or at least claimed the admission fee, and it was granted. Mr. Young, in his affidavit of 13th April, 1846, swears, "Mr. Cozzens' agent paid the duties, in consequence of my absence," and he practically showed his interest by receiving back himself, the duties exacted from and paid by Mr. Cozzens, on the importation per Indiana, as appears from Leffingwell's deposition.

II. The claim is next rested on the ground, that "the machinery, tools, and implements" in question, were "models of machinery, inventions, and improvements in the arts," &c. And the first objection made by the Solicitor is, that "the right was put on the first ground above," already considered "in the affidavits and protests, as well as in the cases of Allen & Son and others." These protests and affidavits are informal papers, prepared not by lawyers, but by persons unskilled in technicalities; but they plainly refer to the claim that the articles be admitted free, "sometimes under the tariff act of 1842;" "sometimes under existing laws," and "sometimes referring to the sections," and no exception has been taken in any of the cases before the department to those forms.

The next objection is, that "the entries were of *machinery*, and not *models* of machinery," and Bend *vs.* Hoyt, (13 Peters, 263,) is cited for this, but the cases are wholly unlike. In that case, there was a *mistake in fact* as to what the unopened box contained. It was supposed to be "cotton gloves," a dutiable article. Ten months afterwards the collector was informed the box contained "silk hose, a free article, and he was sued for a return of the duties paid, and he prevailed, because the importer was guilty of "culpable negligence," in withholding the correction so long, and because, to allow such an action to be sustained, would cause much inconvenience in the custom-house, but Mr. Justice Thompson dissented. In the present case, there was no mistake as to what the articles were, they being described in the invoices to the custom-house as "machinery, tools, and implements," and the particular machines were also mentioned in some or all, and some of them were described as engines, lathes, &c. The only question was upon the *definition* not *the face* of these articles, and under what description they were in the law. All the facts were before the collector and department. Now, we say, *these machines were in fact* MODELS.

We do not seek "after such a laps of time," to change or prove any fact except that, being models, the machines were *used* and *served* as such. And reference is here made to the memorial referred to in the claimant's petition as having been very early presented to the Treasury Department, in which these machines were claimed to be admitted free as *models, &c.*

Bouvier's definition of a *model* may be correct, as to one kind of model, but a model is not *necessarily* "on a small scale." We speak of a model machine, or mill, or house, or ship. A large and full size scale is often much better, a model to construct by, as proved by Mr. Hill, and in many cases is indispensable. The patent laws protect "improvement on any art, machine, manufacture, or composition of matter." The act in question was probably designed to facilitate the importation of such improvements, whether patented or not. Did Congress expect these would come in the form of *miniature models*, such as are filed in the Patent Office for the purpose of explaining the inventor's full and exact description, so that, by the aid of both, the machine may be constructed? Such models are no articles of trade or importation; are not constructed abroad for importation, and in cases of cotton or woolen machinery, could not be procured in Europe where they are willing to sell us their suits of machinery, if we will pay for the patent rights as this claimant did, and upon which they can make their profit, but never could consent to send us *miniature models* to show us how to build the machines. All this was known to the Congress which enacted this law, and of course, they could not have referred to such models, but to full size machines, which were useful and the most improved, and to suits of them, because, by thus uniting and working them together is the only way in which their merits can be tested, and they be generally introduced. If a manufacturer should import one of such machines it would be of no use to him, as he could not try it alone, nor could he build more without great expense of patterns and long delay, and this is the machinist's vocation, but this privilege was intended for the manufacturer as well as the machinist. The construction contended for would deny it to the former, and the machinery in question could not have been built in this country, in 1845, from any models, such was then the press of work in the machine shops.

On these grounds, undoubtedly, the different suits of new and improved machinery were admitted free, under the directions of the Treasury Department, in the many cases referred to in the documents emanating thence.

It is next denied that these machines have served as models, and an equivocal expression of Mr. Hill is quoted for this. In his answer to the 16th interogatory, Mr. Young states the fact of what Mr. Hill did, POSITIVELY. He says, "Immediately after the importation of the machinery, I called Mr. Hill's attention to the slubbers and fly frames, and he immediately produced a set of patterns and offered the machines for sale, and has since made that a permanent department of his extensive business," having, as he says himself, built 800 of the machines. Mr. Young says, the Potter & Smith self-actors were also copied, and Mr. Davol says he built 50,000 spindles of similar ones

for Mr. Young, visiting the claimant's mill to examine these machines for the purpose. These drawing frames were also the first in the country which contained the COILER, as Mr. Young says, since extensively used. A part of the machines on which duties were exacted, were tools to be used by the ten mechanics who arrived with them. (See Mr. Young's deposition.)

That the construction of the act now contended for was given to it deliberately, and after the full consideration of the Comptroller and Secretary of the Treasury, is proved by the depositions and documents in this case, viz: in the claimant's own case, of *parts of this same machinery* imported in the ships Indiana, Sheridan, Samuel Hicks and Shenunga. Also, in the case of Philip Allen & Son, similar machinery; of Gov. Steele, and of manufacturers at Lowell, per his deposition; and of John Marland, as stated by Mr. Young. Also, of many others, some of which appear by the following letters from the Treasury Department, viz:

Comptroller M'Culloch to Edward Curtis, collector of September 18, 1843.

Same to same, of September 22, 1843, directing tools, &c. imported by one man, to be used by another, a manufacturer, and he says "the object of the enactment, being in our opinion, (his and the Secretary's,) as well, to encourage the employment of artificers in the United States, in the mode pursued by them, as by admitting free from duty tools, &c., the property of persons arriving in the United States." It will be seen he makes no difference between what are called tools and machinery.

Same to Lemuel Williams, collector, of February 28, 1845, admitting machinery of a manufacturer, on his return from England. Same to same, of March 24, 1845, ordering duties exacted on nine machines, of a person arriving in the United States, to be refunded.

Same to C. W. Lawrence, collector, of September 5, 1845, in which cotton machinery is directed to be admitted free and the subject is deliberately considered and the decision of Secretary Walker, himself, in the previous case, and that of the United States circuit court, in New York, are given as the grounds of the present decision.

Same to same, of October 5, 1845, directing Mr. Butterfield's machinery for making worsted and cotton goods, as well as that of William Perry and others, to be admitted free.

Same to same, of October 8, 1845, directing Noble T. Green's tools, &c., to be admitted free; same to same of December 19, 1845, directing the free admission of Mr. Mældrum's machinery, to be *used by himself* and Mr. Burritt, who never went abroad, for making cotton bagging and sail duck. The memorial is addressed to Mr. Walker. And, lastly, the suit of machinery of the Portsmouth mill, in which Mr. Young, the person who went after it, had a small interest, and the duties on which were remitted by Mr. Walker, himself. This case was after that of the claimant's, and must have occurred but a very short time before Mr. Walker's circular, of June, 1846. Such a series of decisions by the Comptroller and Secretary of the Treasury, seems very important, in the present case, in two aspects. 1. It shows usage

and custom under the law, being cotemporary construction, and hence binding.

2. An admission of the party, the government, that such is the true construction of the law, and hence should be binding.

3. These decisions commend themselves as fair, liberal, and the true construction of the law. And they were based upon, and expressly declared to be conformable to, and sustained by the decision of the court of law, having full and final jurisdiction in the case, a decision which I presume this Court will not think proper to overrule.

The Solicitor's printed argument contains what purport to be sundry copies of letters from the Treasury Department, which, it seems, were handed to him long after the proofs in the case were closed, and the argument commenced, and there are NO COPIES OF THEM IN THE CASE, and for these reasons the claimant objects to their being considered as TESTIMONY. He has had no notice of such papers and no opportunity to inquire for the others which evidently must be connected with them, if there are such documents in the department. A copy of the letter from Secretary Guthrie, however, is annexed to Governor Steele's deposition, but it is nothing but an *ex post facto* construction of the act which had been fully administered differently by his predecessors, under a contemporaneous construction. As such, whatever respect it may be entitled to, as the opinion of an able lawyer, it can have no AUTHORITY with the Court.

If my objection to the other documents should be overruled, as I think it cannot be, I beg to correct some important errors of fact in them. Mr. Barker states that "Governor Steele's case was attended by PECULIAR CIRCUMSTANCES, the machines or tools of trade were procured abroad in person by the applicant." I THINK Governor Steele's deposition shows that he was only one of the parties interested; also, that he ordered a part of the machinery sent out at subsequent periods. Mr. Barker, seems entirely ignorant of the many cases above referred to, where one party brought out the machinery himself and others, or for others alone; also, that Mr. Young was, and claimed to be, interested with Mr. Cozzens in the machinery, as much as Mr. Young was in the Portsmouth machinery, admitted free by Mr. Walker, himself, and Mr. Allen, Mr. Mældrum, Mr. Butterfield, Mr. Ibbottson and the others, to none of which Mr. Barker refers, and he seems to be ignorant of them.

Such glaring defects and misstatements being found in Mr. Barker's "Report," it can have no weight with the Court, nor can the Secretary's action, based upon it. And it seems no fault is found by Mr. Barker with the decision in Governor Steele's case. Hence, had he known the FACTS in the claimant's case, his report would have been different.

The other documents, if admitted, show that, after the deliberate decisions and action of the department above proved; in June, 1846, which must have been nearly cotemporaneous with his free admission of the Portsmouth machinery, the Secretary had changed his views of the construction of the act, and then, for the first time, discovered that "frequent attempts at EVASION of the payment of the legal duties had been made," &c. Whether this new view was in any measure

induced unconsciously, of course, in the mind of the Secretary, by the low state of the treasury at the time, as the claimant's agent thought, or not, it is certain that all those "*attempts at evasion*," were fully sanctioned by him, and the most important permitted by himself alone. It is believed the new construction of the Secretary, after what he had previously done, will have little influence with the Court.

In reference to the Solicitor's remark about a suit at law, it may be proper to state, that the claimant "WAS ADVISED" to commence one against the collector. But he was very unwilling to relinquish the idea that the government, HAVING ADMITTED THE FOUR LAST IMPORTATIONS FREE, would ultimately consent to return the duties which all its officers, acting in the matter, had admitted to be wrongfully exacted. He accordingly, as his petition and the documents show, directly memorialized the department before the date of the circular of the Secretary in June, 1846, but unfortunately, ITS ADVERSE DECISION WAS NOT PRONOUNCED TILL THE MONTH AFTERWARDS.

He afterwards placed his papers in the hands of a member of Congress, to be presented to the department again. Nothing was done, however, and when the claimant got back his papers, he was about to commence his action, but then discovered that six years had elapsed, and on inquiry being made of Mr. Lawrence, he said, if sued, he should plead the statute of limitations, and the action was abandoned. Next, Governor Steele took up the matter, upon whose application Mr. Barker's very erroneous report was made, which would have been corrected by the claimant, had he been favored with a sight of it. It may be proper to remark here, that if the Court should require FURTHER PROOF of these, OR ANY FACTS stated in this brief, it will be furnished, if the case can be opened for that purpose.

In conclusion, it only remains to say, that the early decisions and action of the department, in 1843, and in the early part of 1845, held out to the claimant, as well as to many other manufacturers, a strong inducement to go to England for their machinery. In addition to obtaining that which was most improved, such as would serve as models for the whole country, they were led to believe, that by its free admission a considerable saving would be made in the price. This expectation was realized, it is believed, in every instance, except the two unimportant ones mentioned in Secretary Walker's letter of June 6, 1846, and the present claimant for a large portion of his importations. The government has thus profited by the inducements it held out, and received a considerable sum of the claimant's money, which it would not otherwise have received. Even if the construction given to the act was doubtful, it would better comport with the dignity of the government, as well as with justice, to carry this LAST CASE that can arise through consistently, than that a decision should be made which would leave the effort to complete the deception upon the claimant.

It is now for this court to say, whether the government can, *ex aequo et bono*, *retain* the amount of these duties, or should not, rather, refund it, with interest; which, if the principal is awarded, must follow, at the legal rate in the State where the payments were made, as it was upon no contract upon which the payer made a profit.

BENJAMIN COZZENS, *Trustee, &c.*

IN THE COURT OF CLAIMS.

BENJAMIN COZZENS, trustee, *vs.* THE UNITED STATES.

GILCHRIST, C. J., delivered the opinion of the Court.

The claim stated in the petition is as follows:

In the month of March, 1845, the claimant then being the owner of two cotton mills at Warwick, in the county of Kent, in Rhode Island, purchased a vacant cotton mill at East Greenwich. This mill required large additions and alterations, and the machinery in the Warwick mills required to be replaced, and the claimant resolved to import from England such of the machinery and tools as he could not obtain to advantage in this country. He made an arrangement with J. S. Young, esq., who had experience and skill in machinery, by virtue of which Mr. Young was to go to England, and contract for such machinery and tools as they intended to import, and then return to the United States and put the machinery in operation. He was also to have an interest in the mills and machinery, which was duly conveyed to him. Mr. Young sailed for England in the month of April, 1845, and executed the arrangements, and in the same year returned to the United States, and brought with him a portion of the machinery. The residue of the machinery, &c., was mostly received at New York, and the greater part of it, by Young's aid and advice, was put in operation in the mills. The understanding with Young was, that the machinery and tools he should import should be the newest and most improved, and such as would serve for models or patterns to be copied by our machinists. The four pairs of "Potter's Patent Self-Actors" were entirely new, and also the "Smith's Patent Self-Actors," and the "Drawing Frames" and "Roving Frames," the latter called "Fly Frames" and "Slubbers," and all these have served as models and have been extensively copied by our best machinists. The claimant alleges that "in case of the principal of said machines" he paid sixpence sterling per spindle on some 1,200 spindles for the English patent right.

The claimant then states that "the extent to which the above described machines have served as patterns or models and been copied in this country, seems to show the wisdom of the tariff act of 1842, in admitting them free of duty. Believing such to be the true construction of the 9th section of said act, and being confirmed in this by finding that many other manufacturers about the same time imported machinery and tools which, on the same construction of the act, were admitted free by the collectors under instructions from the Treasury Department, * * I claimed that said machinery, &c., should be admitted free. But this being refused by the collectors, I paid from my own funds, according to my understanding with Mr. Young, the duties on several of the first importations, per the schedule annexed, under protest. On the 27th day of March, 1846, I addressed a memorial to the Treasury Department, stating the foregoing facts, and requested that an order might issue for refunding to me the amount of duties thus paid by me upon the importations of said machinery

already made, and that the shipments then to arrive might be admitted free. The last part of my memorial was granted, and several shipments, constituting a considerable part of said machinery, were admitted without payment of duty, but why the same officers refused to refund the duties already paid under the same circumstances, I never could learn, except that my agent supposed it was on account of the low state of the treasury at that time." On the 12th of December, 1853, the late Secretary of the Treasury decided against the claimant on the ground that the question was made in 1846, and decided against him, and also because, in his opinion, the machinery was by law liable to pay duties.

On the 1st day of January, 1856, this claim was assigned to Samuel D. Cozzens, as trustee for the wife of the claimant, for a valuable consideration, and the claim is now prosecuted by her husband and Samuel D. Cozzens for her benefit.

By the 3d subdivision of section 9, of the tariff act of August 30, 1842, (5 Stat., 560,) "implements and tools of trade, occupation, or employment of persons arriving in the United States," are admitted free of duty; and by the sixth subdivision of the same section, "models of machinery" are also admitted free of duty. It is in one of these categories that the machinery in question is alleged to be included.

It is proved by the deposition of William A. Liffingwell, that upon importations of machinery by the claimant, duties were paid as follows:

Upon importations by ship	"Ohio,".....	$466 80
	"Roscius,".....	444 40
	"Sea,".....	1,866 30
	"Sheridan,".....	427 20
	"Shakspeare,".....	14 40
	"Southerner,".....	29 70
Amounting to the sum of.....		3,248 80

The duties paid upon the importations by the ship Indiana were refunded. There is no evidence of any protest in the case of the duties upon the importations by the ship "Empire" and the steamer "Arabia." Protests were made in the six cases above specified. In the case of the importations by the ship "Ohio," the reason for the protest is stated to be because the articles were "imported by Benjamin Cozzens, and selected for him by his agents in England, for his own use, at his mills at East Greenwich, Rhode Island, and not imported directly or indirectly for any other person or persons, or intended for sale; but to be operated by him at his works in the manufacture of cotton goods." The protest also states that he claimed "this ma-machinery as tools of trade of Benjamin Cozzens."

In the protests in the cases of the importations by the ships "Roscius," "Sea," "Sheridan," and "Southerner," the machinery is described as "tools of trade." In the protest in the case of the

importations by the ship "Shakespeare," it is stated that "under the existing laws said machinery is entitled to be entered free"

In the entries at the custom-house the property was described as follows:

Importation by "Shakespeare," "one case of machinery."
"Ohio," "18 cases, containing two pairs mules."
"Southerner," "one box machinery, &c., and contains one model ruling machine."
"Sea," "43 cases, * * contain machinery, tools, implements, model, and moulds."
"Roscius," "13 cases of machinery * * contain. tools, implements, and machinery."
"Sheridan," "twelve cases implements models and moulds."

The affidavit of Mr. Young, made before the collector of Portsmouth, New Hampshire, states that, "about a year ago, (April, 1845,) in order to improve in manufacturing as much as possible, and being desirous of introducing into said mills the most improved inventions of European machinists, and finding it impossible then to obtain the most important machinery and tools in the United States, I proceeded to England, and while there engaged and purchased certain machinery and tools to be used in our said cotton mills, a portion of which were imported in the ship Indiana, recently arrived and discharged in New York. The goods are correctly described in the entry which was made on the — day of March last, and the duties ($472 50, expenses at custon-house $21 73,) were paid under protest by Mr. Cozzens' agents in consequence of my absence, being at the time on my passage from England. * * * The said machinery and tools were imported for the use of myself and partner in said mills, and not directly or indirectly for any person or persons whatsoever, nor intended for sale."

In his deposition, Mr. Young states: "I did, in April, 1845, go to England to procure machinery for Mr. Cozzens, the claimant. I contracted for the machinery in England and had it shipped to Mr. Cozzens. There was a large quantity of the machinery, mostly drawing-frames, slubbing, and fly-frames, and self acting mules; also, a considerable amount of lathes and other mechanical tools." The machinery "was not imported for sale, but for use in Mr. Cozzens' mills at Greenwich and Warwick." "Parts of it were brought in the ship with me." He and Mr. Cozzens claimed that the machinery should be admitted free, "under those acts of Congress which provide that model machinery and implements of trade shall be admitted free of duty," and a portion of it was admitted free of duty. The machines were essentially new in this country. They have served as models from which to construct other similar machines, as follows: "Certain peculiarities of the drawing-frames, such as the appliance of the boiler, have been very generally adopted, and the use of the fly-frame and slubber has nearly altogether superseded all other machinery for making roving. Potter's self-acting mule has since been largely introduced for spinning fine yarns. And whether Smith's

mules were previously used I cannot say, but they have since been largely used for more ordinary work. The witness called the attention of Mr. Hills, an extensive machine builder, to the slubbers and fly-frames, "and he immediately produced a set of patterns and offered the machines for sale, and has since made that a prominent department in his extensive business."

There is evidence in the case tending to prove that machinery of a similar description to that mentioned in this case has been imported by other persons, and has been admitted free of duty.

Upon this evidence, the first inquiry is, whether the machines, &c., were "implements and tools of trade, occupation or employment of persons arriving in the United States." It is always difficult to give definitions, but the line must be drawn somewhere. It is very clear that all the material means which a person may use by which to earn his living cannot be considered as his "tools of trade," in the meaning of the act of Congress. The library which might be imported by a lawyer; the drugs to be used by the chemist; the ready made articles imported by a dealer in them, are the means by which these individuals respectively acquire their livelihood, but it would hardly be contended that they should be admitted free of duty as "tocls of trade." We must give to words the signification which they ordinarily bear, and we must suppose that Congress, in a law relating to the business affairs of men, used language in a way intended to express the idea which would be conveyed to the majority of those persons whose interests were to be affected. The primary object of the claimant was to import machinery for the use of his mills at East Greenwich and Warwick. He says in his petition that the mill "at East Greenwich required large additions and alterations, and to be fitted with new machinery, tools, &c., and the machinery in the Warwick mills was much worn, and required to be replaced with new." And he very properly determined to import from England such machinery as he could not obtain to advantage in this country. But when the machinery was obtained, and set up and worked in the mills, it became a part of the fixed investment of capital, with which the claimants business was carried on, and thus it answered the purpose for which it was procured and imported. It no more constituted the claimants "tools of trade" than did the mills in which it was placed. It is not necessary for this case that we should attempt to give a definition, which would be correct under all circumstances of the language used in the act of Congress. It was probably intended that no duties should be imposed upon such implements and tools of trade as a person arriving in the United States should bring with him for the prosecution of his mechanic art. In one sense of the word, "machinery" is an "instrument;" that is, it is something subservient to the execution of a purpose, but something more than such subserviency is required to bring articles within the description of "tools of trade." The word "implement" has a very extensive signification. In its broad sense it means anything which may supply a want, but it is particularly applied to the tools or instruments of labor, and it is in this sense that we speak of the *implements of trade or husbandry*. The question is not whether machinery of the description

imported by the claimant might not, under some circumstances, come within the description of "tools of trade" but whether machinery imported for the declared purpose of being immediately placed in a mill, and becoming a part of the capital there invested, was intended by the language used in the act to be admitted free of duty. We do not think it was intended. Our opinion is, that to embrace machinery imported as this was, in that description, would be to give to the words of the law a wider sense than was intended, or than it would be reasonable to attribute to them.

It is also contended that the articles were entitled to be admitted free of duty, because they were "models of machinery." A *model* is a pattern of something to be made, anything of a particular form, shape, or construction intended for imitation. It may, undoubtedly, be made on a small scale, according to the definition given by Bouvier, or it may be preferable to have it of full size in many cases. In either case, it is something made for the purpose of being imitated, and for our present purpose it is immaterial whether it be of full size or not. It is enough that the intent, the predominant purpose was not to use the machinery as models, simply for the purpose of affording patterns for imitation, but it was imported as a substantive thing in itself, to be used by the claimant in the prosecution of his business. The mere fact that the machinery was susceptible of being copied and imitated, and was imitated, is not enough to make it a model in the sense of the act. If this were so, every machine which was copied, would be, by the fact of being imitated, a model, and duties paid upon its importation should be refunded. But such imitation cannot effect the question of liability to pay duties. That liability must depend on the facts existing at the time of the importation; and as the evidence shows that the machinery was imported for the purpose of being used by the claimant, and as its serving as models was only a secondary and incidental consideration, we do not think it was free of duty within the meaning of the act.

It appears that the decision of the Treasury Department upon the liability of machinery imported under such circumstances as exist in this case have not always been consistent with each other. Sometimes duties have been required to be paid, and sometimes the machinery has been admitted free, or the duties paid have been refunded. But it is the duty of the court to ascertain, if possible, the true meaning of the law, irrespective of the practice of the executive departments. A decision of the Treasury Department may be valuable for the light which its reasoning may throw upon a question, but cannot, of itself, have the force of law in construing a statute. We can derive no assistance from the decisions of the department upon the present question, as its practice has not been uniform.

In the opinion of the court, the claimants have no ground for relief.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 194.

RESOLUTIONS

OF THE

LEGISLATURE OF THE STATE OF TEXAS,

IN RELATION TO

Kansas affairs.

MARCH 9, 1858.—Ordered to lie on the table and be printed.

JOINT RESOLUTIONS in response to the governor's message on Kansas affairs.

Whereas there exists, and has existed, a violent determination, on the part of a portion of the inhabitants of the Territory of Kansas, to exclude by force the citizens of the slaveholding States from a just, equal, and peaceful participation in the use and enjoyment of the common property and territory of the members of the confederacy; and whereas this determination, owing to the state of political feeling in the northern States of the confederacy, operating upon the federal government, may become effectual, and the exclusion perpetual: Therefore—

1. *Be it resolved by the legislature of the State of Texas*, That the governor of this State is hereby authorized to order an election for seven delegates, to meet delegates appointed by the other southern States, in convention, whenever the executives of a majority of the slaveholding States shall express the opinion that such convention is necessary, to preserve the equal rights of such States in the Union, and advise the governor of this State that measures have been taken for the appointment of delegates to meet those of Texas. And that the sum of *ten thousand dollars*, or so much thereof as is necessary, be, and the same is hereby, appropriated, out of any money in the treasury not otherwise appropriated, to pay the mileage and per diem of such delegates, which shall be paid at the rate paid to members of the United States Congress, according to the law in force in the year 1854.

2. *Be it further resolved*, That, should an exigency arise, in the opinion of the governor, in which it is necessary for the State of Texas to act alone, or by a convention representing the sovereignty of the State, he is hereby requested to call a special session of the legislature to provide for such State convention.

3. *Be it further resolved*, That the governor is requested to transmit copies of these resolutions to the executives of each of the slaveholding States and to our members of Congress.

Approved February 16, 1858.

DEPARTMENT OF STATE,
Austin, Texas, February 23, 1858.

I, the undersigned, secretary of state of the State of Texas, do certify that the above and foregoing is a correct copy of the original joint resolutions on file in this department.

Given under my hand and the seal of the department of state, the [L. S.] day and year first above written.

T. S. ANDERSON,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 195.

MEMORIAL

OF THE

LEGISLATURE OF THE STATE OF WISCONSIN,

IN BEHALF OF

The claims of John Shaw to pay for services as a spy or scout in the war of 1812, *and for remuneration for losses sustained in furnishing supplies for the Missouri and Illinois mounted rangers during said war.*

MARCH 11, 1858.—Referred to the Committee on Military Affairs and the Militia and ordered to be printed.

MEMORIAL to Congress in behalf of the claims of Colonel John Shaw, of Marquette county, Wisconsin.

To the honorable the Senate and House of Representatives in Congress assembled, the memorial of the legislature of the State of Wisconsin respectfully represents:

That your memorialists have learned that their venerable fellow-citizen, Colonel John Shaw, has made application to Congress for pay for three years' services, during the entire war of 1812–'15, on the frontiers of Missouri and Illinois, as a spy or scout, say from the outbreak of the Indians in that region, in the spring of 1812, till the news of peace reached the northwestern frontiers, in the spring of 1815; and also a claim of $13,684 93, for losses sustained to that amount during said war, in consequence of furnishing the Missouri and Illinois rangers with various kinds of supplies necessary for mounted rangers; that said rangers not getting their pay till after they were disbanded and scattered to their several homes and elsewhere, Colonel Shaw failed to receive his just dues from them, to the amount above mentioned; that said losses, sustained by his patriotic efforts to serve his country in her day of need, plunged him into embarrassments from which it required several years to extricate himself. Your memorialists further represent that Colonel Shaw bears among his fellow-citizens a high and unblemished character for worth, integrity, and enterprise, and none who know him doubt his statement as to his services or the losses he represents himself to have sustained; and now, in his declining years, having nearly attained the age of seventy-four, and so nearly blind as to be incapacitated for any manual labor, he really needs all that is justly due from his country. A statement of his services may be found in the *Second Annual Report and Collections of the State Historical Society of Wisconsin*, which state-

ment, your memorialists are satisfactorily informed, has been thoroughly tested by the officers of that society, and found to be worthy of the fullest confidence and belief. Your memorialists therefore respectfully ask your honorable body to give the claims of Colonel John Shaw that careful attention and examination which they are well persuaded they justly deserve.

JOSHUA STARK,
Speaker pro tem. of the Assembly.
B. G. GILL,
President pro tem. of the Senate.

Approved October 4, 1856.

COLES BASHFORD.

Resolved by the senate, the assembly concurring, That the governor be requested to forward copies of the memorial to our senators and representatives in Congress, in relation to the claims of Colonel John Shaw, who are hereby solicited to use their best endeavors to obtain from Congress favorable action on said memorial.

I hereby certify that the above is a true copy of a joint resolution originating in the senate, adopted by the senate October 6, 1856, and returned concurred in by the assembly without amendment, October 7, 1856.

Attest:

BYRON PAINE,
Chief Clerk Senate.

STATE OF WISCONSIN, } ss.
Secretary's Office.

The secretary of state of the State of Wisconsin does hereby certify that the foregoing act has been compared with the original enrolled act deposited in this office, and that the same is a true and correct copy thereof and of the whole of such original.

In witness whereof, I have hereunto set my hand and affixed the great seal of the State, at the capitol, in Madison, this 6th day of October, 1856.

[SEAL.]

JOHN W. HUNT,
Assistant Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 196.

RESOLVES

OF THE

LEGISLATURE OF THE STATE OF MAINE,

REQUESTING

The Senators and Representatives of that State in Congress to use their influence to prevent the repeal of the law allowing bounties to vessels engaged in the cod fisheries.

MARCH 12, 1858.—Ordered to lie on the table and be printed.

STATE OF MAINE.

RESOLVES relative to bounty on cod fisheries.

Whereas a bill has been proposed in Congress to repeal the act allowing bounties to vessels employed in the cod fisheries, the passage of which will greatly injure if not destroy one of the most important interests of this State, and one which affords employment to thousands of our hardy citizens; and,

Whereas the passage of such a bill will have the effect to render almost, if not entirely, useless a large class of vessels which, from their peculiar build and model, cannot be successfully employed in other business, and which have been built under what was supposed to be a well-founded reliance upon the continuance of a policy which places us more nearly upon a level with those of other nations engaged in the same business, whose governments bestow a more liberal bounty thereon than our own; and,

Whereas our past history abundantly proves that the cod fisheries afford the cheapest, best and most efficient schools for manning our navy in time of war; therefore,

Resolved, That the repeal of the law granting bounties to vessels employed in the fishing business will be unjust and oppressive to those induced by the existence of the law to embark a large amount of capital therein, and at the same time will, in a national point of view, be impolitic and unwise, inasmuchas we shall thereby be deprived, in case of war, of the most reliable source for a supply of American seamen.

Resolved, That our senators and representatives in Congress be requested to exert their influence to prevent the repeal of the law allowing bounties to vessels engaged in said business.

Resolved, That the governor be requested to transmit to our senators and representatives in Congress a copy of these resolutions to be laid before Congress.

In the house of representatives, March 4, 1858. Read and passed.

WILLIAM T. JOHNSON,
Speaker, pro tem.

In senate, March 5, 1858. Read and passed.

SETH SCAMMON,
President.

March 5, 1858. Approved.

LOT M. MORRILL.

OFFICE OF SECRETARY OF STATE,
Augusta, March 8, 1858.

I hereby certify that the foregoing is a true copy of the original deposited in this office.

LEWIS D. MOORE,
Deputy Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 197.

RESOLUTIONS

OF

THE LEGISLATURE OF THE STATE OF CALIFORNIA,

REQUESTING

The senators and representatives of that State in Congress to take measures to prevent the removal of the Sebastian Indian reservation from its present location.

MARCH 12, 1858.—Referred to the Committee on Indian Affairs, and ordered to be printed.

Whereas the people of the southern portion of the State of California are deeply interested in preserving peaceful relations with the numerous and warlike tribes of Indians in their neighborhood;

And whereas the Sebastian Indian reservation has, in an eminent degree, practically aided, and is still aiding, in the preservation of peace and quiet;

And whereas, furthermore, reports have been circulated that the federal authorities contemplate a change of location of said reservation, thereby jeoparding the lives and property of our fellow-citizens and inviting Indian hostilities: Therefore—

Resolved by the assembly, the senate concurring, That our senators and representatives in Congress be requested to obtain such legislation from Congress as may prevent the removal of said reservation from its present location; and that they be further requested to use their influence with the proper executive department to induce a continuation of the present reservation.

Resolved, further, That the governor be requested to transmit copies of this preamble and these resolutions to our representatives in Congress and to the Secretary of the Interior.

OFFICE OF SECRETARY OF STATE,
Sacramento, Cal., January 30, 1858.

I, Ferris Forman, secretary of state of the State of California, do hereby certify that the annexed is a true and correct copy of concurrent resolutions which were passed by the assembly, March 20, 1856, and the senate March 21, 1856, as appears the assembly, journals of the seventh session.

[SEAL.] Witness my hand and the great seal of State, at office in Sacramento, California, the 30th day of January, A. D. 1858.

FERRIS FORMAN,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 198.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1858.—Referred to the Committee on Finance and ordered to be printed.

RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF TEXAS,

REQUESTING

The senators and representatives of that State in Congress to use every exertion in their power to obtain the enactment of a law to authorize the payment to that State of the balance of the appropriation made by the act of 28th February, 1855, providing for the payment of a certain portion of the public debt of Texas.

JOINT RESOLUTION.

Whereas there is a considerable balance remaining in the Treasury of the United States of the appropriation made by the act of Congress providing for the payment of a certain portion of the public debt of Texas, passed on the 28th of February, 1855, owing mainly to the loss of securities by holders of the same; and whereas, under the circumstances, those parties may never be able to make the necessary exhibition of Texas liabilities at that department, to enable them to obtain the money due them, and will be compelled to apply to the State legislature for relief; and whereas Texas is entitled to any and all balances in the Treasury of the United States which has not been paid to the creditors under the act of Congress above referred to; therefore—

Be it resolved by the legislature of the State of Texas, That our senators and representatives in Congress be, and they are hereby, requested to use every exertion in their power to obtain the passage of a law by Congress authorizing the payment of any balance remaining in the treasury as aforesaid over to the accredited agent of the State of Texas.

Resolved, That the governor of Texas be, and he is hereby, requested to furnish each of our delegates in Congress with a copy of this resolution.

Approved February 16, 1858.

DEPARTMENT OF STATE,
Austin, Texas, February 25, 1858.

I, the undersigned, acting secretary of state of the State of Texas, do certify that the transcript on the reverse hereof is a correct copy of the original joint resolution on file in the department of state.

[SEAL.] Witness my hand and the seal of the department of state, the day and year first above written.

BIRD HOLLAND,
Acting Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 199.

RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF NEW YORK;

INSTRUCTING

The senators and requesting the representatives of that State in Congress to use their influence to procure the enactment of a law granting a pension to the surviving soldiers of the Indian wars from 1791 *to* 1795, *and to the widows of those deceased.*

MARCH 15, 1858.—Referred to the Committee on Pensions, and ordered to be printed.

STATE OF NEW YORK.—EXECUTIVE DEPARTMENT.

Resolved, (if the assembly concur,) That our senators in Congress be instructed, and our representatives requested, to use their influence to procure the passage of a law granting a pension to the surviving soldiers of the Indian wars of seventeen hundred and ninety-one to seventeen hundred and ninety-five, under Generals Wayne, Harmer, and St. Clair, and to the widows of the deceased soldiers of that war.

Resolved, (if the assembly concur,) That his excellency the governor be requested to transmit a copy of the above resolution to our senators and representatives in Congress.

IN SENATE, *February* 4, 1858.

Passed.
By order: S. P. ALLEN, *Clerk.*

IN ASSEMBLY, *February* 27, 1858.

Concurred in.
By order: D. WILSON, *Clerk.*

35TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 200.

RESOLUTIONS

OF THE

LEGISLATURE OF THE STATE OF NEW YORK,

INSTRUCTING

The senators and requesting the representatives of that State in Congress to urge the enactment of a law granting to the militia of the States arms and equipments of the greatest efficiency, and in greatly increased numbers; and also the enactment of a law to improve the organization of the militia.

MARCH 15, 1858.—Referred to the Committee on Military Affairs and the Militia and ordered to be printed.

STATE OF NEW YORK.

IN SENATE, *March* 5, 1858.

Whereas it appears, from the report of the commissary general and other officers, that the muskets furnished by the federal government to the military forces of this State are of an old pattern and unserviceable quality; and that the issue of such arms continues, notwithstanding the remonstrance of this State, and the fact that there are arms of the latest and most improved models in the United States arsenals; and whereas this State has, with great care and attention, improved her military system, and holds in readiness to serve the republic a large and reliable force, disciplined and equipped according to act of Congress; therefore be it—

Resolved, (if the assembly concur,) That our senators in Congress be instructed, and our representatives requested, to urge the passage of a law which shall grant to the militia of the States arms and equipments of the greatest efficiency, and which shall greatly increase the quantity of arms issued; and also the passage of a law to improve the organization and discipline of the military of the States.

And be it further resolved, That the governor be requested to transmit a copy of the preamble and resolution to each of our senators and representatives in Congress.

The above resolutions were duly passed.

By order of the senate:

S. P. ALLEN, *Clerk*.

IN ASSEMBLY, *March* 8, 1858.

The above resolutions were duly passed.

By order of the assembly:

D. WILSON, *Clerk.*

STATE OF NEW YORK, }
Secretary's Office. }

I have compared the preceding with the original concurrent resolution on file in this office, and do hereby certify that the same is a correct transcript therefrom, and of the whole of said original resolution.

Given under my hand and seal of office, at the city of Albany, this eleventh day of March, in the year one thousand eight hundred and fifty-eight.

S. W. MORTON,
Deputy Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 201.

MEMORIAL

OF THE

MEMBERS AND OFFICERS OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF UTAH,

SETTING FORTH

Their grievances, and praying Congress to reconsider the course already taken, to respect their constitutional rights, withdraw the troops, and give them a voice in the selection of their rulers.

MARCH 17, 1858—Referred to the Committee on Territories and ordered to be printed.

MEMORIAL from the members and officers of the legislative assembly of the Territory of Utah to the President and Congress of the United States.

GENTLEMEN: Your memorialists beg leave to represent that, at the last session of the legislative assembly of this Territory, resolutions and a memorial to the President of the United States were adopted and presented to him, which partially set forth our grievances and made known to the government at Washington our desires and wishes in regard to the appointment of the federal officers for Utah. We have received no response to those documents, unless it is to be understood that the appointment of a full set of officers for this Territory, backed by an army to enforce them upon us, as reported by common rumor to have been ordered and fitted out, and sent to this Territory by the President, is to be deemed an answer. Certain it is that such an army is now invading our Territory, claiming to have been sent by the authority of the President of the United States.

We now forward to you respectfully, to wit: the President and Houses of Congress, a printed copy of those resolutions and memorial, and if it is true that the army now menacing this Territory is at the instance of the President, and by the authority of the government, we request to be informed of the fact, and why it is so; for what reasons our resolutions and memorial are treated with silent contempt, and a hostile course pursued towards an unoffending people? Why it is that our eastern mails have been stopped, and the communication between this Territory and the general government cut off?

If officers had been appointed and sent in accordance with the voice of the people, as ever should be the only course in a republican government, there would have been no need of an army's being sent here.

Were the resolutions and memorial disrespectful or defiant? Read them again and see. There is not a word or sentiment in them that can fairly be construed to throw obstacles of any kind in the way of GOOD men that might be appointed to rule over us; they simply express a fixed determination not to submit to the misrule of corrupt demagogues, who are a disgrace to the government, and who, as subsequent events have proved, expended their time in endeavoring to create a disturbance between us and the general government.

Cannot American citizens, upon American soil, be heard in their own defence? Can they not petition the parent government, without incurring its hot displeasure? Are we to be sacrificed because lying officials and anonymous letter writers wish it so? And does the government rely upon their false statements to base its action, and such action to send an army compromising the constitutional rights, the liberties of freemen? Are the horrid scenes of Missouri and Illinois to be re-enacted by the general government? Are we to be robbed and plundered, our best men slain, and the residue again driven from their homes by a merciless and infuriated soldiery, under authority usurped by the general government?

Do you not know, gentlemen, that when government ceases to perform its legitimate functions to the people, and to protect them in their inalienable rights, among which, as our fathers declared, are "life, liberty, and the pursuit of happiness," and seeks to oppress and destroy, it becomes an object of dread—of terror—a foul disgrace to its name, and cannot expect the support, respect, and esteem which should be its pride and is its duty to inspire?

We appeal to you as American citizens, who have been wronged, insulted, abused, and persecuted; driven before our relentless foes from city to city, from State to State, until we were finally expelled from the confines of civilization (?) to seek a shelter in a barren, inhospitable clime, amid the wild and savage tribes of the desert plain. We claim to be a portion of the people, and as such have rights which must be respected, and which we have a right to demand. We claim that in a republican form of government, such as our fathers established, and such as ours still professes to be, the officers are and should be the servants of the people, and not their masters, dictators, or tyrants.

To the numerous charges of our enemies we plead not guilty, and challenge the world before any just tribunal to the proof.

Are we mistaken in our views in regard to the policy and intention of the government? We hope that you will prove to us that we are. We ask you to reconsider the course that has been taken, to evince by some act of returning justice that you respect our constitutional rights, and see whether it will not lighten the burden of oppression which you have inflicted; and that the people may have just cause to rejoice in and applaud, not condemn your acts, withdraw your troops, and give us a voice in the selection of our officers, thus proving to us your willingness to extend peace rather than war.

True, this Territory is a part of the public domain of the United States; but how was it acquired? Did not the people of Utah furnish, at the call of the government, an altogether unprecedented quota of

troops to aid in the war then raging with Mexico, and that too under the most adverse circumstances? And did not the people settle this Territory while it was still under the dominion of Mexico? And did not the government discharge the "Mormon" battalion in an enemy's country, after a most toilsome march of over two thousand miles, without furnishing them the means to return? Your present acts would deprive of life and liberty those very men who so gallantly perilled their lives for the common good.

We do not charge the acts of his predecessors upon the present incumbent; but now restore unto us our rights in Missouri and other states, of which we were most inhumanly robbed; reinstate and guarantee unto us the peaceful possession of lands for which you have taken and yet retain our money; bring to justice the murderers of Joseph and Hyrum Smith, who were massacred while in the custody of the law—under the pledged faith of a sovereign State; punish the assassins of Parley P. Pratt, who slew their unresisting victim beneath the portals of the court which had pronounced him guiltless; restore unto us our political, religious, and inalienable rights, that we may have reason to believe that you are our friends and not our enemies; execute justice and judgment upon the guilty, and spare the innocent; let truth, honesty, industry, love of right and liberty stand unmolested and protected by your acts, as they are by the very genius of our loved institutions. Do that and you will do more towards rescuing our beloved country from its foul pollution and its fearful doom than can be accomplished by endeavoring to destroy a people who, under the broad folds of the Constitution, deem it no sin to unite in worshipping God according to the dictates of their own consciences. Pay us a few hundred thousand dollars, which the government honestly owe us for suppressing Indian hostilities and maintaining peaceful relations with the native tribes, instead of expending millions to deprive a portion of your citizens of "life, liberty, and the pursuit of happiness." Try on the plaster of friendly intercourse and honorable dealing, instead of foul aggression and war. Treat us as friends—as citizens entitled to and possessing equal rights with our fellows—and not as "alien enemies," lest you make us such.

You have never cherished nor fostered this as you have other Territories, though having more claim to your generosity, forbearance and protection. In 1856 we adopted a republican constitution and form of government, and forwarded those documents, a census report, and a petition to be admitted into the Union as a free, sovereign, and independent state, but an unhallowed prejudice was so strong against us that our delegates found no member of Congress willing to present and advocate our position. Why not grant us admission, and thereby at the same time act justly and peacefully and wisely dispose of a vexed question?

You have appointed, the newspapers state, a full set of officers for Utah from among entire strangers, and to do so were obliged to hawk about the offices from State to State, every honorable and principled man indignantly declining your appointments, until at length you succeeded in finding the requisite number from among the reckless, the drunken, the unprincipled, the dissolute, the houseless and penni-

less, who alone feel the need of the backing afforded by bayonets, and, for this reason, had far better remain where society is more congenial to their depraved and corrupt tastes. No doubt such is the character of the present appointees—for what other class would accept offices among a people where they well knew they were not wanted, and hence had no right, officially, to be? All we have further to say of them is, they had better tarry with their friends, if they really have any.

We claim that we should have the privilege, as we have the constitutional right, to choose our own rulers and make our own laws without let or hindrance. Examine our reports, our laws, our acts; they have ever been before the public; they speak for themselves.

All we want is the truth, and fair play. The administration have been imposed upon by false and designing men; their acts have been precipate and hasty, perhaps through lack of due consideration. Please to let us know what you want of us before you prepare your halters to hang, or "apply the knife to cut out the loathsome and disgusting ulcer." Do you wish us to deny our God and renounce our religion? That we shall not do. We are at the defiance of earth and hell to prove that we have done aught to offend the *good*.

You have not extended to Utah so much as the customary usages of investigation, which would have placed in your possession the facts in the case. Do you wish us to permit a hireling soldiery to come into our settlements? If so, for what object? Is it to protect the citizens in their rights? That is needless, because those rights have never been, in the least, infringed upon in Utah; and we are far better prepared to protect ourselves than when we first settled in this Territory, while our young and healthy men were in the United States army in Mexico. United States troops, acting in their legitimate capacity, are only sent to protect the citizens or suppress insurrection, and never, in any case, to make war upon the people.

We feel as competent to protect ourselves as we have hitherto; and there is no insurrection to quell. That "white heap" within our borders contains something besides meal; there are the deadly fangs to hold the innocent prisoners still while assassins kill them. We shall not again hold still while fetters are being forged to bind us. We have no confidence to believe the present a harmless demonstration, intended for our good. The troops, which claim to have been sent by the government, have openly said, from the time they left the Missouri river, and even before, that they were coming to destroy the leaders of our people, and that that was their object. That has been their constant speech by day and the burden of their songs by night. They have threatened to take our lives and to sport, at pleasure, with our wives and daughters. That is their openly avowed object; but woe to all who attempt to accomplish it. We trust, therefore, that you will excuse us if we do not entertain a very exalted idea of your humane (?) intentions in sending armies hither.

Give us our constitutional rights; they are all we ask, and them we have a right to expect. For them we contend, and feel alone justified in so doing.

We are aware that we have many enemies, and that they make a

strong party against us. From them we expect no mercy. A large portion of them know that if justice had its due they would either be pulling hemp by the neck or learning a trade in the confines of a prison. They roam at large in your community; are boon companions in your halls of business and of pleasure; adorn your circles of fashion, and participate in your festivities. But there is a chord of right—of honesty—integrity to the institutions of our country—of love of freedom and a respect for the rights of the weak and comparatively defenceless—that will yet thrill with emotion, vibrate through the honest heart, and respond to the cry of usurpation, tyranny and oppression exercised upon an innocent people. To that we appeal, and trust that a stern sense of justice yet remaining among the worthy sons of patriotic sires will stay the suicidal hand of crawling sycophants and corrupt rulers, and that American liberty may not be immolated upon her own altars, nor strangled in the halls of her own citadel by those whose sworn duty it is to be her protectors.

Withdraw your troops; give us our *constitutional rights*, and we are at home.

Heber C. Kimball, *Pres't Council.*
Daniel H. Wells,
Albert Carrington,
F. D. Richards,
Lorenzo Snow,
Wilford Woodruff,
Lorin Farr,
Benjamin F. Johnson,
Leonard E. Harrington,
Joseph Holbrook,
Warren S. Snow,
Louis Brunson,
George A. Smith,
John Taylor, *Speaker H. R.*
W. W. Phelps,
A. P. Rockwood,
J. C. Little,
Daniel Spencer,
Alexander McRea,
Orson Hyde,
J. W. Cummings,
Hosea Stout,
Jos. A. Young,
H. B. Clawson,
John Rowberry,
J. D. Parker,
Reddick N. Allred,
Chauncey M. West,
Aaron Johnson,
James C. Snow,
Preston Thomas,
J. G. Bigler,
George Peacock,
Philo T. Farnsworth,
J. C. Haight,
John H. Lee,
Isaac Bullock,
Leo. Hawkins, *Sec'y of Council.*
John T. Caine, *Assistant do.*
George D. Grant, *Serg't-at-arms.*
Samuel L. Sprague, *Messenger.*
John Sharp, *Foreman.*
C. H. Wheeler, *Chaplain.*
James Ferguson, *Ch. Clk. H. R.*
Patrick Lynch, *Assistant do.*
Wm. H. Kimball, *Serg't-at-arms.*
N. B. Young, jr., *Messenger.*
William Derr, *Foreman.*
Jesse Haven, *Chaplain.*
Wm. H. Hooper,
Sec'y pro. tem. U. T.

GREAT SALT LAKE CITY, UTAH TERRITORY, *January* 6, 1858.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 202.

MEMORIAL

OF THE

LEGISLATURE OF THE STATE OF IOWA,

PRAYING

A donation of land for the purpose of establishing scientific agricultural schools in that State.

MARCH 17, 1858.—Referred to the Committee on Public Lands, and ordered to be printed.

MEMORIAL to Congress for a grant of land for the support of agricultural colleges and scientific agriculture.

To the Senate and House of Representatives of the United States:

Your memorialists, the general assembly of the State of Iowa, respectfully represent to your honorable body that the *farmers* of the State of Iowa are exceedingly desirous to establish a scientific agricultural college and schools for the purpose of giving freely to all a profound knowledge of the great truths and fundamental principles of nature, whereby all may become fully acquainted with the properties of the earth, the vegetable kingdom, and the peculiar adaptation of plants to certain soils, and likewise to obtain a complete knowledge of animals, that their stock may be brought to the highest state of perfection.

Your memorialists sincerely believe that, by conferring this great privilege upon the *respectable* portion of community, you would thereby add greatly to the interests of all branches of industry, by bringing rapidly to perfection, and increasing, the products of the farmer.

Your memorialists would further say, that as it has been a practice of your honorable body to make munificent grants of land for the endowment of schools and universities; and that in all cases the interest of that class of community which is generally termed the backbone of trade and commerce has been entirely overlooked:

We, therefore, do respectfully ask a donation of 50,000 acres of land, to be taken from the public lands in this State, for the purpose of establishing scientific agricultural schools.

Resolved, That the secretary of state be instructed to send certified copies of the foregoing memorial to each of our representatives and senators in Congress.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved March 3, 1858.

RALPH P. LOWE.

I hereby certify that the foregoing is a true copy from the original roll on file in my office.

ELIJAH SELLS,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 203.

MEMORIAL

OF

THE LEGISLATURE OF THE STATE OF WISCONSIN,

PRAYING

The adoption of such measures as will secure to that State the amount due from the sale of public lands therein.

MARCH 19, 1858.—Referred to the Committee on the Judiciary and ordered to be printed.

MEMORIAL to Congress for amount due from sale of public lands lying within this State.

This memorial respectfully represents that according to act of Congress, and by virtue of a provision in the constitution of Wisconsin, this State is entitled to five per centum of the net proceeds arising from the sale of public lands lying within the same; and that there is now due the State from the general government about the sum of three hundred thousand dollars, arising from that source. The amount due having been refused on the application of persons authorized to receive it, your memorialists respectfully ask your honorable body to adopt such course or enact such laws, as will secure to this State the amount due her from the sales of public lands, as herein set forth.

The governor of this State is hereby requested to transmit a copy of this memorial to the President of the United States and to each of our senators and representatives in Congress.

F. S. LOVELL,
Speaker of the Assembly.
E. D. CAMPBELL,
Lieutenant Governor and President of the Senate.

Approved March 12, 1858.

ALEX. W. RANDALL.

STATE OF WISCONSIN, *Secretary's Office.* } *ss.*

The secretary of state of the State of Wisconsin does hereby certify that the foregoing memorial has been compared with the original

memorial filed in this office, and that the same is a true and correct copy thereof and of the whole of such original.

In witness whereof I have hereunto set my hand and affixed the great seal of the State at the capitol in Madison, this thirteenth day of March, A. D. 1858.

[L. S.]

D. W. JONES,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 204.

RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF NEW YORK,

RELATIVE TO

The admission of Kansas into the Union as a State.

MARCH 24, 1858.—Read, ordered to lie on the table, and be printed.

IN ASSEMBLY, *March* 6, 1858.

Resolved (if the assembly concur), That the State of New York is opposed to the admission of Kansas into the Union as a State, with the constitution commonly known as the Lecompton constitution, or any other constitution which shall not have been in all its parts fairly submitted to the legal voters of the Territory, and received their sanction and approval.

Resolved, That a copy of this resolution be transmitted to the senators and members of the House of Representatives from this State in Congress.

Passed assembly.
By order:

DAVID WILSON, *Clerk.*

IN SENATE, *March* 19, 1858.

Passsd Senate.
By order:

S. P. ALLEN, *Clerk.*

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 205.

IN THE SENATE OF THE UNITED STATES.

[To accompany Bill S. 210.]

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

ENCLOSING

A communication from the Commissioner of the General Land Office, with an opinion as to the practicability and necessity for creating additional land districts in California.

MARCH 25, 1858.—Ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, March 24, 1858.

SIR: I have the honor to transmit to you herewith a copy of the letter of the Commissioner of the General Land Office, dated the 23d instant, accompanying the draught of "a bill to create additional land districts in the State of California," &c.

I coincide with the views expressed in the Commissioner's letter, and believe the enactment of the proposed law would promote the public interests, and be just to the citizens of California.

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

Hon. C. E. STUART,
Chairman of the Committee on Public Lands,
United States Senate.

GENERAL LAND OFFICE,
March 23, 1858.

SIR: With a letter of this date from the Hon. C. E. Stuart, chairman of the Senate Committee on Public Lands, I received the enclosed bill "to create additional land districts in the State of California, and for other purposes," desiring our opinion as to the propriety and ne-

cessity of its passage, and expressing a wish for a reply, if possible, by to-morrow morning.

In connexion with the project, we bear in mind the great geographical extent of the State; its extraordinary physical outline, of which its sharp, rugged, and, at places, impassable mountains, render inland communication from certain points extremely difficult, and sometimes impassable. Then, again, we know the great diversity of interests—agricultural, commercial, and mineral—the importance of easy and convenient access to the seat of the land office, where the inviting soil and treasures of the State stimulate the increase of population and extension in distant directions of settlements. These facts satisfy this office that the present project of increase in number, with power in the Executive, from time to time, to readjust boundaries and change localities of land offices, is a very necessary and proper one, demanded by high public interests, and it is accordingly recommended

With great respect, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Hon. J. THOMPSON,
Secretary of the Interior.

P. S.—I suggest the propriety of the following amendment of the bill: In the third line strike out the words "two or three," and after the word "districts," in the same line, insert "in his discretion, not exceeding three."

T. A. H., *Com'r.*

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 206.

RESOLUTIONS

OF THE

LEGISLATURE OF THE STATE OF MAINE,

IN RELATION TO

Kansas and slavery.

MARCH 25, 1858.—Read, ordered to lie on the table and be printed.

STATE OF MAINE.

REPORT OF THE COMMITTEE ON SLAVERY.

Your committee, to which was referred so much of the governor's address as relates to the aggressions of slavery, ask leave to report: That, fully concurring with the governor in his able, truthful and thorough review of the alarming aggressions of the slave power, and of the rapid revolution now on the eve of attempted completion by the national administration, marked by a radical departure from the doctrines of the fathers, aided by the Supreme Court of the United States, in a bold perversion of the Constitution, degrading that charter of liberty to the base uses of slavery extension, and crowned by the President's endorsement of the Kansas usurpation and his adoption of the Lecompton outrage, recommend the passage of the follow- resolves.

C. W. GODDARD,
E. W. WOODBURY,
J. W. HANSON,
HENRY E. PRENTISS,
T. H. MARSHALL,
HENRY KINGSBURY,
B. PRATT, JR.

STATE OF MAINE.

RESOLVES RELATING TO KANSAS AND SLAVERY.

Resolved, That the people of Maine are unalterable in their devotion to the Constitution and the Union, and demand of the national administration an immediate return to the principles on which the Constitution was framed, and by which alone the Union can be preserved.

Resolved, That the Missouri compromise was a solemn compact between the free and slave States; that its perfidious breach in eighteen hundred and fifty-four deserved, as it received, the universal condemnation of our legislature and people, without regard to party, and such remains the unchangeable conviction of the State.

Resolved, That the reign of the late territorial government in Kansas presents a record of villany and violence unparalleled in modern history, unfolding a gigantic plot to force African slavery upon the freemen of that Territory by the barbarous and bloody edicts of a foreign legislature, sustained throughout by the administration, with its army and territorial judiciary.

Resolved, That the recent message of the President of the United States is a falsification of the history of Kansas, a libel upon the free people of that Territory, and a deep disgrace to the American name, and to the office once filled by Washington.

Resolved, That the President's confession that the late foreign territorial government in Kansas would have been overthrown by the people long before its annihilation in October, unless he had upheld the usurpation by military power, reveals the complicity of the administration in the execrable scheme of governing Kansas by a minority sustained by federal bayonets, setting up a military despotism to "crush out" the free-State majority and the sovereignty of the people; and his estimate that a standing army of "at least two thousand regular troops" had been found necessary to maintain the equilibrium of parties in that Territory, measures the magnitude of the free State majority—so enormous as to equal in effective power "at least two thousand" of his best "troops."

Resolved, That the President's astounding assertion that "Kansas is at this moment as much a slave State as Georgia or South Carolina" is a monstrous heresy, the slave power's latest commentary on the doctrine of popular sovereignty, and a suggestive example of the operation of the Kansas-Nebraska bill.

Resolved, That, since this is his interpretation of the Constitution and the law, the people of Maine demand of the President its practical recognition, by an immediate withdrawal of the federal army, the territorial governor, and the infamous judiciary, that the "State" of Kansas may be left, like "Georgia or South Carolina," to the government of "State" officers, and to the protection of a "State" militia.

Resolved, That the Lecompton constitution was conceived in fraud and brought forth in contemptuous defiance of the popular will and in mockery of the professions of the Kansas-Nebraska bill, by which alone the iniquity became possible. Maine enters her solemn and indignant protest against the stupendous swindle.

Resolved, That those members of Congress who, at the passage of the Kansas-Nebraska bill, professed a belief in its avowed principle of popular sovereignty, are now loudly called upon to vindicate the sincerity of their professions by repudiating the Lecompton constitution, in which that principle has been shamelessly betrayed.

Resolved, That if that constitution shall finally be forced upon Kansas against the solemn remonstrance of its people, then, in the

opinion of this legislature, they will be justified in resisting it at all hazards and to the last extremity; and, in so righteous a struggle, the people of Maine are ready to aid them, both by sympathy and action.

Resolved, That the people of Maine have just cause for gratitude and pride that they are now fully represented in both branches of Congress by men who, entertaining and maintaining sentiments and principles in harmony with an immense majority of their constituents, require no specific instructions from this legislature. While their past course meets our approval, it affords us the surest guarantee that they will, to the extent of their ability, strive to avert from our country the impending danger, by resisting to the end the attempted outrage of forcing upon the free people of Kansas a slavery constitution that they abhor, and in the formation of which they have had no part.

Resolved, That the governor be requested to forward a copy of these resolves to the governors of the several States and Territories, to be laid before the legislatures thereof, and to each of our senators and representatives in Congress, to be laid before the Senate and House of Representatives of the United States.

IN THE HOUSE OF REPRESENTATIVES, *March* 13, 1858.

Read and passed.

JOSIAH H. DRUMMOND, *Speaker*.

IN SENATE, *March* 16, 1858.

Read and passed.

SETH SCAMMAN, *President*.

Approved March 16, 1858.

LOT M. MORRILL.

OFFICE OF SECRETARY OF STATE,
Augusta, *March* 18, 1858.

I hereby certify that the foregoing is a true copy of the original deposited in this office.

NOAH SMITH, JR.,
Secretary of State.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 207

MEMORIAL

OF

LAWRENCE KEARNY, A CAPTAIN IN THE UNITED STATES NAVY,

PRAYING

Compensation for certain expenses incurred and services rendered.

MARCH 17, 1858.—Referred to the Committee on Naval Affairs. Motion to print referred to the Committee on Printing.

MARCH 30, 1858.—Report in favor of printing submitted, considered and agreed to.

To the Senate and House of Representatives of the United States of America in Congress assembled:

The memorial of Lawrence Kearny, a captain in the navy of the United States, respectfully represents: That he entered the navy as a midshipman on the 24th of July, 1807, under President Jefferson; was promoted to a lieutenancy in 1813, by President Madison; to the rank of master commandant in 1825, by President Monroe, and to that of captain, in 1832, by President Jackson.

The naval career of your memorialist has been active and eventful for the period of upwards of fifty years, during which he has been in the service, as the records of the Navy Department will fully show, and he now presents himself before your honorable bodies, for the first time, a petitioner on his own behalf.

It cannot be expected, nor is it necessary, that your memorialist should give the minute details of a life of service extending over a period of half a century, but the following condensed statement, together with extracts from public records and documents, is respectfully submitted for consideration as a part of this memorial:

Having received a midshipman's warrant in 1807, as aforesaid, your memorialist reported to Commodore Rodgers, on the New York station, and served there in the flotilla of gun-boats during the continuance of the embargo and non-intercourse acts; he afterwards served in the Constitution and President frigates on the coast until the year 1810, when he was transferred from the latter to the United States schooner Enterprise, Lieutenant Benjamin Franklin Read, commander, and sailed for New Orleans. Soon after leaving port the vessel encountered a severe gale of wind; the main mast was carried away by the fury of the storm, and it was found necessary to throw

the battery overboard to save the schooner from sinking. The Enterprise, having sprung a leak, was obliged to put into Norfolk, Virginia, where, upon survey, she was found to be unseaworthy, and her officers and crew, your memorialist among the number, took passage for Charleston, South Carolina, in the packet schooner Ploughboy. Your memorialist, having been stricken down by a severe attack of illness, was unable to proceed further than this latter place, and the captain of the Enterprise, together with his officers and crew, took passage for New Orleans in gun-boats, leaving him dangerously ill and under heavy expense, for a period of several weeks, at one of the public hotels of Charleston, there being at that time no naval hospital in said city.

The Enterprise, having been refitted, arrived at Charleston, under command of Lieutenant Johnson Blakely, where your memorialist, whose health had been somewhat restored, again joined her as second lieutenant. After a short cruise upon the southern coast, she returned to Washington, where she was rebuilt and converted into a brig, and sailed for New Orleans in the spring of 1812, your memorialist being attached to her as first lieutenant.

The war with great Britain, declared on the 18th of June, 1812, became known to those on board the Enterprise upon arriving inside the Balize, and preparations for sea were immediately made. On leaving New Orleans, in August, the vessel encountered the dreadful hurricane of that season, which carried disaster and death in its track, was blown high and dry upon the shore, and greatly damaged; every other vessel in port suffered more or less. Most of the officers and crew, your memorialist among the number, having been taken sick with a dangerous fever then prevailing, they were sent to the hospital for treatment; some of them died, and your memorialist narrowly, but fortunately, escaped the same fate.

The Enterprise was once more refitted, and your memorialist, still suffering from his illness, rejoined her and proceeded to the port of St. Mary's, in Georgia, where he quitted the vessel, by permission, and travelled to Washington city, bearing his own travelling expenses. Those expenses have never been paid to him; neither has he received any compensation for the serious losses he suffered in the two disasters before mentioned.

Having arrived in Washington, your memorialist sought to be assigned to one of the frigates in the north, but was appointed by the then Secretary of the Navy to the command of the United States schooner Carolina, just built at Charleston, South Carolina, mounting fourteen guns. Upon assuming his command, he at once sailed off Bull's bay in pursuit of a British privateer, the Brilliant, mounting fifteen guns, which he chased under the guns of one of the enemy's frigates, and from being a pursuer became the pursued. After a long chase he effected his escape from his formidable enemy by running the Carolina over Port Royal bar. On returning to Charleston, your memorialist was superseded in his command by Master Commandant John D. Henley, and, under orders, assumed command of the United States schooner Ferret, of six or eight guns, engaged in the coast service. In February, 1813, the Ferret fell in with two sloops-of-war belonging

to the enemy, and being cut off from Charleston by one, and from Edisto inlet by the other, escaped from both by running into Stono inlet. In attempting to get out of that inlet on the day following, a heavy gale coming suddenly up, the schooner was wrecked, and sustained a total loss of vessel, provisions, stores, clothing, papers, and all valuables of every nature. For the individual losses sustained, neither your memorialist nor his officers and crew have been in any way compensated.

Your memorialist was immediately ordered to the command of the United States schooner Nonsuch, of fourteen guns, and while cruising off the coast of South Carolina fell in with the British frigate Lacedemonian, by which she was chased for some eighteen hours, part of the time being within reach of the frigate's guns, but her shot passing either over or ahead of the schooner; eventually, by throwing overboard the schooner's battery, shot and other articles, the vessel was enabled to approach so near the land that the frigate could no longer follow. Disappointed of an anticipated prize, the frigate, in tacking, fired a parting broadside at the schooner, but fortunately a sudden squall had thrown the frigate partially over, so elevating her guns that the shot passed over the masthead of the Nonsuch and fell harmlessly upon the shore. The Nonsuch having reached Charleston, your memorialist was detached and ordered to the command of a flotilla of galleys and barges employed on the coast and in the sounds and bays of South Carolina, in which service he continued until the close of the war in 1815. While employed in this service, your memorialist, together with the officers and crews under his command, rendered valuable and important protection to the inhabitants of that section of country, for which your memorialist has every reason to believe they entertained a high appreciation; and, it is believed, that the said services are still remembered with a lively sense of gratitude. The last service rendered by the flotilla under the command of your memorialist was immediately before hostilities ceased, when your memorialist, at Bull's bay, captured, with a couple of boats, an armed schooner and a boat belonging to an English frigate in the offing; the boat was afterwards carried into Charleston, but the schooner went to pieces in Bull's bar breakers in a gale, a total loss to the captors as well as to the enemy.

Your memorialist refers, respectfully, to the accounts in Cooper's Naval History, and extracts from Niles' Register, copies hereunto annexed, showing the value and importance of his services, in part, on the coast of South Carolina, and also to the official letters of Captain Dent, commander of the Charleston station, to the Navy Department.

After the close of the war with Great Britain in 1815, your memorialist was ordered to the command of the United States brig Enterprise, which vessel, after going to Bermuda for the officers and crew of the frigate President, and making one cruise in the Mediterranean, was engaged in various duties on our own coast, and in the suppression of piracy in the West Indies and Gulf of Mexico. It is a matter of historical record that the services rendered by the Enterprise, under command of your memorialist, were of the highest importance, not only to the commerce of the United States, but that of other nations trading

in the West Indies and the Gulf of Mexico. Those seas were infested with lawless and powerful gangs of pirates, engaged in depredating upon the commerce of all nations, and causing not only great pecuniary loss, but that of life to innocent and unoffending parties. Through the active exertions of your memorialist near Cape Antonio, on the island of Cuba, the gang of the notorious Gibbs, afterwards hanged in chains at New York, was dispersed and some of their number taken. The chief pirate, with his principal followers, succeeded in escaping at that time, after a long and arduous chase. The American brig Aristides and ship Lucies, with full cargoes from Liverpool, and the English brig Larch, which had been attacked and partly plundered by the pirates, were recaptured, and, with the exception of the first named, which being stranded on a reef of rocks was burned by your memorialist, were restored to their owners. The most valuable portion of the cargo of the Aristides was saved and sent to Charleston in the vessels captured from the pirates. Four piratical schooners of about forty tons each, and one sloop of twenty five tons, engaged in piratical aggressions under the noted Gibbs, were captured; two of the schooners were burnt by your memorialist, and the others, together with the sloop were sent to Charleston and condemned. Subsequently a schooner of thirty-five tons burden was captured and burnt, and your memorialist also captured and destroyed three lauches and four barges, belonging to the pirates and employed in their expeditions. Your memorialist continued for a period of seven years in command of the Enterprise, in the active discharge of varied duties, and during a part of that time examined nearly every nook and corner in the West India islands, dispersing the pirates and breaking up their strongholds. The services rendered to the commerce of all nations by your memorialist, and those under his command, received the highest commendation from insurance companies, merchants and ship owners engaged in the commerce of that quarter of the globe, as will appear by reference to the archives of the Navy Department. The hardships to which your memorialist submitted while in the discharge of his arduous duties, being incident to his profession, were endured without murmur, but he was necessarily compelled to disburse very considerable sums of money over and above his pay, for which he has never been renumerated, notwithstanding the government derived directly much benefit therefrom. The duties accruing to the United States upon the goods captured and sent into Charleston in the vessels taken from the pirates amounted to the sum of nine thousand three hundred and forty-three dollars and seventy-one cents, while the net proceeds of the prizes condemned amounted only to the sum of one hundred and twenty-five dollars, which trifling amount was distributed among the officers and crew of the Enterprise.

Immediately upon returning to the United States from a seven years' cruise in the Enterprise, your memorialist, at his own request, was ordered to the command of the Decoy, attached to the squadron under Commodore David Porter, for the suppression of piracy, and, in the month of January, 1823, sailed from Norfolk for the West Indies, where he continued with said squadron in command of the Decoy, and afterwards of the schooner Greyhound, until August 16,

1823, when the latter was condemned. In a letter detaching your memorialist, and directing him to report to the honorable Secretary of the Navy, Commodore Porter says, "It affords me sincere pleasure to express to you my high sense of the important service you have rendered to the expedition which I have the honor to command, and of your indefatigable zeal and unremitting efforts on all occasions, and in every way that presented itself, for the suppression of piracy. It is my hope that they may be rewarded by your speedy advancement to a higher rank, and it will be gratifying to me, on your obtaining a proper command, to have you again under my orders." Your memorialist was conveyed in a public vessel to Savannah, Georgia, and from thence to Washington was compelled to bear his own expenses, which have never been refunded. Hereto appended will be found extracts from a report of the cruise of the Greyhound, made to Commodore Porter, to which your memorialist respectfully refers.

On the 2d of December, 1826, your memorialist, who had been previously promoted to the rank of master commandant, was ordered to the command of the United States ship Warren, and sailed for the Mediterranean on the 22d of February, 1827. While in the Levant in that year, your memorialist, learning that the Greek pirates were committing frequent and serious depredations upon the commerce of all nations, resolved to put a stop to it. Through the indefatigable exertions of himself and those under his command, the strongholds of the pirates were broken up, the gangs dispersed, and commerce relieved of their depredations. It is deemed unnecessary to enter into a detail of the varied services rendered by the Warren, or to enlarge upon the benefits which resulted to the commercial interests of our own and other countries. Your memorialist respectfully refers to the official report of the Warren's cruise, on file in the Navy Department, (copy hereto appended,) and to the documents hereto annexed, to show the valuable agency of that vessel in the suppression of piracy, and the protection of commerce in the Grecian archipelago.

While thus affording protection to the commerce of all nations from piratical depredations, your memorialist, with those under his command, were exposed to many privations as well as much suffering and hardship, and besides were unable, from circumstances entirely beyond their control, to avail themselves of the benefit of the captures they had made.

After serving for upwards of two years in the Warren, your memorialist was detached and returned to the United States, and on the 20th of December, 1832, was promoted to the rank of a captain in the navy. For several years he was engaged in miscellaneous shore duties, and waiting orders, until the year 1839, when he was appointed to the command of the frigate United States, then at Boston. In 1840, it having been ascertained upon survey that the United States was unseaworthy, he was appointed to the command of the frigate Potomac, and sailed for Brazil and reported to Commodore Ridgley, then in command on that station. While there, your memorialist was appointed to the command of the East India squadron, and in February, 1841, hoisted his broad pennant on board the frigate Constellation, in the harbor of Rio de Janeiro, it being the first in-

stance in our navy that a broad pennant had been raised on a foreign station, and sailed, in company with the United States ship Boston, for his destination in the month of March following. Upon arriving at the Cape of Good Hope it was found that the standing rigging of the Constellation was in a very defective condition, and the vessels were there delayed for some time in order that the necessary repairs might be completed. On the 30th of July, all being in readiness, the vessels made sail, and in the month of August following arrived at Johanna, one of the Comoro islands, under the dominion of King Selim. Here your memorialist was approached and desired by the king to furnish him with arms and munitions of war, but stated in reply to the request that his government, being at peace with all nations and allied to none, did not permit her officers to interfere in foreign wars, or by furnishing arms and munitions of war to strengthen the military power of one party to the injury of the other. While at the island of Johanna an interchange of courtesies took place between his Majesty King Selim and your memorialist, and, as is usual in such cases, some trifling presents were made to the king; the value of those presents amounted to fifty-six dollars and eight cents, ($56 8,) which was charged to and paid by your memorialist, and which sum has never been repaid to him. The squadron arrived in Macao roads in the spring of 1842, when your memorialist found that after the suppression of opium smuggling under the British flag our national standard had been used to cover the illicit trade. This desecration of our flag, and violation of national principle, were promptly suppressed by your memorialist, resulting in the capture of the Ariel, a noted opium smuggler.

While in the performance of the duties appertaining to his command, your memorialist found that the American merchants in China had claims for grievances, in part growing out of the loss of property in the Dutch factory, which had been plundered and burned by a Chinese mob on the 7th and 8th of December, 1842, and for which reparation had been vainly sought through the hongs. Your memorialist took prompt measures to secure redress, which resulted in the speedy settlement of their claims, amounting to the sum of $261,230, (two hundred and sixty-one thousand two hundred and thirty dollars.)

Your memorialist learned that a commercial treaty was about being concluded between the English and Chinese, and justly fearing that, unless carefully guarded, the interests of the United States might be made to suffer, he at once opened a direct correspondence with the governor of Canton and the imperial commissioners on the subject. It had been customary to send all communications for the Chinese authorities through the hong merchants, and, for reasons too obvious to need special mention, the hongs were extremely anxious that the custom should be continued, but your memorialist, for the first time in the history of this government, determined to pursue a different course, in order that his communications might more certainly reach the hands for which they were designed. The communications, addressed by your memorialist as aforesaid, resulted in a promise on the part of the Chinese authorities to recognize our right of trade, and to extend to our merchants the same protection and facilities which were

about being granted to those of Great Britain. In connexion with his services while in command of the East India squadron at China, your memorialist begs leave to refer to the several letters, despatches, &c., afterwards communicated to the Senate of the United States, in response to a resolution of that body of the 25th of February, 1845, which will be found in Senate Document No. 139, 1st session 29th Congress, (copy herewith,) and also to the additional documents hereunto appended. It will be perceived that while in China your memorialist was afforded an opportunity of negotiating a treaty of commerce with the Chinese, and only declined doing so because not vested by his government with the necessary diplomatic powers. The entire subject was, however, communicated to the government, and led to the appointment of a special envoy by President Tyler in the month of May, 1843, who proceeded to China and there negotiated the treaty, which was ratified January 17, 1845, and proclaimed on the 18th of April, 1846, by which treaty the right of trade and other facilities proferred by the Chinese authorities to your memorialist were secured to citizens of the United States.

While at China, engaged during eighteen months in the various duties of his command, and also those of an extra official character, which led to the important results just named, your memorialist was compelled to sustain heavy expenses, especially in the reception on board his ship of high officials of the Chinese government, and in making presents and preserving an interchange of those courtesies rendered imperative by the usage of nations. It would be impossible for him at this time to state, with any degree of exactness, the items of expenditure; he regards it as sufficient to state that, to meet those expenses, he was obliged, on the settlement of accounts, to encumber his private estate; for his various outlays he has never been remunerated by the government, in whose service they were made On leaving China, after having proceeded as far as possible in the extra official matters already referred to, your memorialist proceeded to the Sandwich Islands, where he arrived in June, 1843, in time to learn that a provisional treaty had been made between King Kamehameha and the representative of the British government, for a transfer of his dominions to the British crown, without reference to the rights or interests of the United States or her merchants. Against such cession your memorialist immediately protested, as will appear by reference to his protest, embraced in the documents communicated to the Senate as already stated, notifying both the king and Captain Lord George Paulet, the British representative, that they would be held respectively liable for all injury to American commerce and American merchants.

The time for which his crew was engaged being about to expire, your memorialist, against his own wishes, but in conformity to the wishes of his countrymen trading at the Sandwich Islands, was induced to remain there, and did so, until a definite settlement of the matters just referred to had been made, and the island flag restored to King Kamehameha by Admiral Thomas, of the British navy, who arrived at that place during the stay of your memorialist.

Since his return to the United States, your memorialist has been

waiting orders, or engaged in miscellaneous shore duties, embracing the command of the New York station, and the presidency of one of the naval courts of inquiry instituted under the act of Congress of January 16, 1857.

Having thus briefly presented for your consideration his long and varied services, your memorialist prays that he may be reimbursed for the expense to which he was subjected while lying ill at Charleston, in 1810 and 1811, amounting, as nearly as can be now stated, to about three hundred dollars; and indemnified for the individual losses sustained by him in consequence of the shipwreck of the schooner Ferret, at Stono inlet, in 1813, which amounted to the sum of four hundred dollars; that he may be allowed for the extra expenses to which he was subjected in his long and arduous cruise in the brig Enterprise, engaged in the suppression of piracy in the West Indies, which amounted to the sum of three hundred and fifty dollars; also for his travelling expenses from St. Mary's, Georgia, to Washington city, on being detached from the brig Enterprise, Captain Blakely, during the war in 1813, and for his travelling expenses from Savannah, Georgia, to Washington, on being detached from the Greyhound, in the squadron under Commodore Porter, and directed to report to the Secretary of the Navy, amounting to the sum of one hundred and fifty dollars.

And your memorialist further prays that he may be compensated for his extraordinary and successful exertions while in command of the Warren, engaged in the suppression of piracy in the Grecian archipelago, during which time neither your memorialist nor those under his command derived any advantages whatever from the captures made, and for the expenses to which he was subjected while engaged in that service, which amounted to about fifteen hundred dollars.

And your memorialist further prays that the sum of fifty-six dollars and eight cents, paid by him for presents to his Majesty King Selim, in 1841, may be refunded to him.

And your memorialist further prays that he may be remunerated for the heavy expenses to which he was subjected in China, beyond those properly appertaining to his command, while acting in a ministerial character in conducting the necessary diplomatic correspondence relative to a proposed treaty with the Chinese authorities, and which duties continued for a period of more than twelve months. And also, that such an allowance may be made your memorialist for the services of an extra official nature rendered by him as to your honorable bodies may seem fit and proper.

And, as in duty bound, your memorialist will ever pray, &c.

LAWRENCE KEARNY.

List of letters, documents, &c.

No. 1. Report of cruise and loss of United States schooner Ferret.
No. 2. Extract from Cooper's Naval History.
No. 3. Letter of Captain John H. Dent to Navy Department, January 31, 1815.
No. 4. Letter of L. Kearny to governor of Omoa, June 30, 1819.
No. 5. Letter of same to Navy Department, July 28, 1819.
No. 6. Insurance companies in New York to Secretary of Navy, July 30, 1819.
No. 7. Same to L. Kearny, November 16, 1819.
No. 8. Letter of L. Kearny to Navy Department, November 12, 1821.
No. 9. Letter of W E. McKenny to L. Kearny, December 21, 1821.
No. 10. Letter of F. Tudor, esq. to the same, February 26, 1822.
No. 11. Certificate of collector and naval officer of Charleston, South Carolina, as to payment of duties on goods captured from the pirates, and L. Kearny's certificate of distribution of prize money.
No. 12. Report of cruise of United States schooner Greyhound, August 10, 1823.
No. 13. Letter of Commodore Porter to L. Kearny, August 16, 1823.
No. 14. Letter of L. Kearny to Captain D. T. Patterson, October 8, 1827.
No. 15. Letter of L. Kearny to governor and primates of Miconi, October 31, 1827.
No. 16. Letter of same to American consul at Miconi, November 4, 1827.
No. 17. Letter of same to consuls of France, Austria, and Sardinia, November 4, 1827.
No. 18. Letter of same to governor of Miconi, November 5, 1827.
No. 19. Letter of same to Captain D. T. Patterson, November 7, 1827.
No. 20. Letter of Lieutenant W. L. Hudson to L. Kearny, November 7, 1827.
No. 21. Translation of an extract from "Spectateur Oriental," November 7, 1827.
No. 22. Translation of another extract from same, December 8, 1827.
No. 23. Extract from a Boston paper.
No. 24. Receipt of British consul at Smyrna, for tratta delivered up.
No. 25. Report of the cruise of the United States schooner Warren.
No. 26. Certificate of B. Issarardeus, esq., January 4, 1834.
No. 27. Extract from letter of David Offley, esq., United States consul at Smyrna, to L. Kearny, October 5, 1829.
No. 28. Extract from letter of same to same, October 7, 1833.
No. 29. Letter of Amos Kendall, esq., Fourth Auditor of the Treasury, to L. Kearny, October 12, 1830.
No 30. Letter of J. Langdon, esq., to L. Kearny, January 27, 1848.
No. 31. Extracts from original instructions of Navy Department to L. Kearny on being appointed to command East India squadron, November 3, 1840.

No. 32. Letter from W. Delano, jr., United States vice-consul, to L. Kearny, May 4, 1842.
No. 33. Letter of L. Kearny to governor of Canton, February 7, 1843.
No. 34. Letter of L. Kearny to Secretary of the Navy, February 25, 1843.
No. 35. Letter of same to governor of Canton, March, 1843.
No. 36. Extracts from letter of same to Secretary of the Navy, April 21, 1843.
No. 37. Message of the President of the United States, communicating correspondence between commander of East India squadron and foreign powers, &c., Senate Doc., 29th Congress, 1st session, No. 139.

No. 1.

Report of the cruise and loss of the schooner Ferret, at Stono Inlet, in February, 1814.

CHARLESTON, S. C., *February* 10, 1814.

SIR: When I had the honor to communicate to you the loss of the United States schooner Ferret, under my command, I was not able to state to you the circumstances attending it, and hereby embrace the opportunity.

Being at Port Royal on the 29th of January, I had the honor to receive, by Captain Henley, your orders, in compliance with which I set out for this place for provisions, stopping at St. Helena sound to supply the Alligator, also to get from her the pilot, who attended both vessels alternately, to fetch me to this place. Not finding either the Alligator or a pilot, I proceeded to sea early the next day with the intention of taking a pilot off Charleston bar; but falling in with two enemy's cruisers off Stono, I was obliged to put into that inlet to evade them.

The weather being such as not to allow me to get out next day, I proceeded up Stono river for the purpose of making my way inland, but found I could not pass through Whappo cut, there not being a sufficiency of water, when I again returned to the inlet.

On the 2d February I proceeded down Stono inlet; but finding the sea very heavy on the bar, in consequence of the easterly gales that had prevailed for two or three days, and the tide at the same time being low and the wind light, I conceived it most prudent to anchor until a more favorable time should offer. While at anchor between the north and south breakers the wind shifted suddenly to the westward and blew a gale, which obliged me to let go a second anchor and send everything down from aloft. The wind continued to blow heavy; the ebb tide and night approaching, I consulted with my officers respecting the propriety of attempting to ride it out through the night; as the holding ground was bad there was little probability of her holding on after the ebb should make, which, in the channel where we then laid, runs very hard.

It being thought most prudent to shift our berth, I got under way with the intention of either getting further up the inlet in better anchorage, or run the risk of getting out to sea. When beating up and in the act of going about, I had the misfortune to touch ground, and by the heavy sea running was hove into shoal water, where she soon lost her rudder and bilged. The masts were then cut away and the deck cleared of everything of weight.

After finding her partly full of water, and all hopes of saving the vessel vain, I commenced getting the men on shore, the sick and such as were least able to assist themselves being first sent off. The boats were not able to return for a long time in consequence of the heavy breakers around the vessel.

At low water the sea abated a little, and afforded us all an opportunity of reaching the shore in safety, though without having saved any property, either public or private. We were all received with much hospitality on the plantation of Mr. Darby.

Next morning, the 3d, I proceeded to the wreck, but was not able to save anything of consequence, the sea breaking heavily over and about her. From the 3d to the 5th I employed the crew in saving what of the public stores they could; part of them have arrived and are deposited in the public store at this place.

To the good conduct and great exertions of all the officers and men must be attributed the happy circumstance of there being no lives lost.

I have the honor to be, &c.

L. KEARNY.

Commodore JOHN H. DENT,
Commanding Charleston Station.

No. 2.

[Extract from Cooper's Naval History, volume 2, page 276.]

In January, 1815, while Captain Dent was at the North Edisto, he obtained information that a party of officers and men belonging to the Hebrus, Captain Palmer, were watering on one of the islands in the vicinity, and he directed Mr. Lawrence Kearny to proceed outside with three barges to cut them off, while a party of militia endeavored to assail them by land. The frigate was at anchor, out of gun shot, but as soon as she perceived the design of the Americans, she fired guns and made other signals of recall, when two of the boats pulled towards her, and a tender that contained a strong party attempted to pull out also. Fortunately, the wind shifted, bringing the Hebrus to windward of the American barges it is true, but the tender to leeward of them. Discovering his advantage, Mr. Kearny determined to make a dash at the latter, regardless of the frigate and the two boats that were pulling off. The Hebrus perceiving the danger in which her tender was placed, now made the greatest exertions to save her. Shot were fired at her own cutters to drive them back to the assistance of the tender, and a third boat was sent from the frigate with the same object. She also opened her fire on the American barges with some

effect, one of her shot taking off the head of a man at Mr. Kearny's side. But this gallant officer, disregarding everything but his object, laid the tender aboard in the steadiest manner, and carried her off directly under the guns of the frigate to which she belonged. The Hebrus' launch was also taken, the people having hurried aboard the tender when the alarm was given. The latter had a carronade and six brass swivels in her, besides other arms.

Mr. Kearny made about forty prisoners on this occasion. The Hebrus intercepting his return by the way he had come out, he carried his prize to the South Edisto.

A few days later, Mr. Kearny, in the launch of the Hebrus, with a crew of twenty-five men, went out and captured a tender belonging to the Severn, having on board between thirty and forty men. Handsomer exploits of the sort were not performed during the war.

Note by Mr. Cooper.—The services and professional character of Captain Kearny, who is still living, are much better known to the navy than to the country. This gentleman was put in situations of command and responsibility soon after he entered the service, in 1807; and while a lieutenant, he probably had commanded vessels longer than any captain on the list. He commanded the Enterprise many years as a lieutenant, and before he was made a master and commander had passed about ten years in separate commands. In the Mediterranean, at a much later day, it was said of this officer, that his ship, the Warren, 20, had done more to suppress piracy than all the other vessels, French, English, American, and Russian, united. Captain Kearny's mother was a sister of the regretted Lawrence.

No. 3.

Letter from Captain Dent to the Secretary of the Navy, from Niles' Register, vol. 7, p. 382.

CHARLESTON, *January* 31, 1815.

SIR: I had the honor to inform you, on the 28th instant, that from information received by the commanding general of the situation of the enemy near North Edisto, and the great alarm of the inhabitants, I had decided to visit the place. On my arrival at the camp on John's island, I sent an express to Lieutenant Kearny, commanding the flotilla, to meet me with his flotilla in North Edisto river.

Lieutenant Kearny did not arrive there until 2 p. m. on Sunday, when I was informed that the enemy were watering with their barges and about eighty men on the opposite island. I immediately directed the three barges to be manned with volunteers, and ordered Lieutenant Kearny to proceed outside and cut them off, while a body of volunteers and militia, by order of the general, were landed on the island. A little after, three of the barges moved, and, on turning the point, were discovered by the enemy's frigate, when she fired several guns and made the signal of recall to her boats, and immedi-

ately got under way and opened a heavy fire on our barges. Wind about this time changed from west to east, and very light, which enabled our barges to cut off the tender, which was discovered working out of a small bay with two barges. After a close running fight of one hour and a half, and in the act of boarding. I had the satisfaction to see the tender surrender, after which the frigate recalled her two boats and ceased firing.

Lieutenant Kearny, the officers and men engaged in this enterprise, behaved themselves in a manner that does honor to their country and themselves. Although they had to continue so long under the fire of the frigate, nothing could divert them from their object. The frigate having cut off Lieutenant Kearny from North Edisto, he was obliged to put into South Edisto with his prize.

The detachment of militia and volunteers proceeded to the place where the enemy were watering, and found their launch aground and abandoned, the crew having gone on board the tender. She was filled with water casks and had mounted a carronade, six brass swivels, with muskets, pistols, &c., &c. She was got off at high water, and I expect her around with the prize.

I have the honor to be, sir, very respectfully, your obedient servant,

JOHN H. DENT,
Com'g Naval Station, Charleston, S. C.

Hon. B. W. CROWNINSHIELD,
Secretary of the Navy.

No. 4.

Documents relative to the cruise of the brig Enterprise, engaged in the suppression of piracy, &c.

UNITED STATES BRIG ENTERPRISE,
Omoa, June 30, 1819.

SIR: On looking over my instructions from the government respecting the schooner Retrieve, her cargo, and the men who, it is said, murdered the master of that vessel, I find it is expected of me to see the vessel and cargo, if relinquished by the authorities here, delivered over to Captain Coggeshall, who is, as before stated, the agent for the property in behalf of Mr. Peter Harmony, owner; and it is also expected of me to proceed with the schooner and all the evidence that I can procure for substantiating the alleged crime of murder. It will, therefore, I find, be the means of delaying me here much longer than I at first expected, and I shall be obliged to replenish my stock of provisions from the Balize or elsewhere, in order to remain this additional length of time.

As you have been so obliging as to give up the men and to allow the vessel to be put in a state of preparation for sea, I feel a diffidence in asking a further indulgence. But as you must be aware that by my being trusted with the management of this affair by my government, I must feel naturally desirous of accomplishing it as soon

as possible, and with as little expense to the unfortunate owner of the property.

The delay I shall have to make to hear the decision of the captain general will be attended with great expense and inconvenience, and should I proceed before that to the United States with the prisoners, it is desirable that Captain Coggeshall should appear on the trial to testify as to transactions within his knowledge.

Under these circumstances, sir, I do myself the honor to address you once more upon this business, and to request your further consideration and indulgence.

As the property and men in question are clearly American, and as I understand you to be fully impressed with that belief, I trust that upon this representation you will accede to the proposal I have to make.

Although authorized myself to enter into measures for the recovery of the property, I have consulted Captain Coggeshall upon the propriety of relinquishing the outstanding debt of seven or eight hundred dollars at Guatemala, for the present, and depend upon you to transmit it to Mr. Peter Harmony, at New York, when recovered.

As to the accounts at this place, I beg the favor of having them adjusted as soon as possible, as I am desirous to know what expenses will be brought against the vessel, and how far the debts will go to defray them.

I hope you will take into view the nature of my instructions, and have the goodness to restore the vessel and cargo without further delay.

With much respect, I am, sir, your obedient servant,

L. KEARNY.

The GOVERNOR OF OMOA.

No. 5.

UNITED STATES BRIG ENTERPRISE,
Quarantine Ground, Staten Island, July 28, 1819.

SIR: I have the honor to report to you my having anchored here this day with the United States brig Enterprise, under my command. The result of my cruise, I am happy to inform you, has been successful.

The schooner Retrieve and cargo I was directed to proceed for to Omoa has been recovered, and proceeded to Vera Cruz, agreeable to the instructions from the owner to the agent now in charge of the property. The mate and one man, late of said schooner, are now on board this vessel, and shall be given up to the civil authority at New York, as directed by your order of the 26th May. I have enclosed to you all the receipts of Captain Coggeshall for the schooner Retrieve and cargo, and I also transmit to you the copy of the trial of the murderers of the Retrieve, with such other papers as I have been able to collect at Omoa.

Nothing further of consequence has occurred during my cruise.

I have the honor to be, respectfully, your obedient servant,

L. KEARNY,

Hon. SMITH THOMPSON, *Secretary of the Navy.*

N. B.—The remainder of the schooner Retrieve's crew could not be apprehended. Two had fled—one to Campeachy, the other to the Havana; one, the cook, died at Omoa.

No. 6.

NEW YORK, *July* 30, 1819.

SIR: In compliance with a resolution passed by the directors of the offices we have the honor to represent, we beg leave to express the high sense we entertain of the efficient steps taken by government in despatching a vessel to reclaim the schooner Retrieve; and while we acknowledge the favor conferred on us by your designating and equipping a vessel, and the promptitude with which that favor was granted, we feel much pleasure in assuring you that the conduct of Captain Kearny has not only met our highest approbation, but we are satisfied his visit to Omoa has been equally honorable to himself and creditable to the nation.

We have the honor to be, sir, with great respect, your most obedient servants,

SAM'L A. LAWRENCE,
Pres't Union Ins. Co.
THEO. DEPEYSTER,
Pres't National Ins. Co.

Hon. SMITH THOMPSON.

No. 7.

NEW YORK, *November* 16, 1819.

SIR: In pursuance of resolves of the respective insurance companies which we represent, we have the honor to present to you, in their behalf, a service of plate, of which they request your acceptance as an evidence of their approbation of your conduct in your late expedition to Omoa, by which the schooner Retrieve and the principal part of her cargo, insured by these companies, were so speedily restored to them.

A zealous attention to the protection of commerce, such as you have manifested on this occasion, by the officers of the American navy, will render that establishment as strikingly useful as its course has hitherto been glorious to our country.

With our best wishes for your individual happiness and success, we have the honor to be, sir, your obedient servants,

ROBERT BENSON, JR.,
CHARLES KING,
HENRY CAREY,
Committee from the Union Insurance Company.
ISAAC LAWRENCE,
JAMES K. HAMILTON,
PETER HARMONY,
Committee from the National Insurance Company.

LAWRENCE KEARNY, Esq.,
U. S. Brig Enterprise, New York.

For which the duties thereon have been paid, amounting to nine thousand three hundred and forty-three dollars and seventy-one cents.

Given under our hands and seals of office this twenty-fourth day of December, one thousand eight hundred and twenty-two.

[SEAL.] J. R. PRINGLE,
Collector.

[SEAL.] JOHN S. COGDELL,
Naval Officer.

I certify, on honor, that the net proceeds of the within mentioned prizes, Nos. 1, 2, 3, amounted to one hundred and twenty-five dollars and nineteen cents, which sum was divided among the officers and men of the Enterprise.

And that this small sum was left, after the various charges had been made against the gross amount of sales of said vessels, for wharfage, marshal's and court charges, &c., &c., at Charleston, South Carolina, as per account in my possession.

LAWRENCE KEARNY.

No. 12.

Report of the cruise of the United States schooner Greyhound, in the squadron under command of Commodore Porter, engaged in the suppression of piracy in the West Indies.

UNITED STATES SCHOONER GREYHOUND,
Thompson's Island, August 10, 1823.

SIR: I have the honor of transmitting herewith for your information the enclosed report of the cruise of this vessel, commenced under circumstances of a vexatious nature, as the report will show, but terminating in a manner, I trust, somewhat satisfactory to you, although the principal object pointed out in your letter (respecting the pirates at the Isle of Pines) has not met that success you may have anticipated; but I have the satisfaction to inform you that, although I have not been so fortunate myself, it has been the fortune of others to apprehend those very villians who committed the outrage upon the American vessels "Reuben and Eliza," and "Mechanic," as mentioned in your orders. They are now in prison at Trinidad de Cuba. My having had a communication with the governor of that place on the subject, I submit herewith my letter and his answer, together with some publications to be seen in Spanish newspapers, for your information.

Although I was not successful in getting the pirates into my possession by the application made through the enclosed letter (and which indeed, I did not expect,) yet you will perceive it has drawn an official acknowledgement of these pirates being in possession of the authorities; making it a matter of public notoriety, it becomes obligatory to

pursue their prosecution to a just and proper issue. I take this occasion to express to you the high sense I entertain of the governor of Trinidad, which his attentions demand; he tendered us every civility, and did all in his power to assist us in the prosecution of our duties, offering to procure us a pilot, and altogether evincing a disposition of friendly co-operation seldom met with on the island of Cuba.

For your better information on the subject of our visit to Cape Cruz, I beg leave to subjoin the detail of events in a more circumstantial and particular manner than given in the enclosed report, viz:

On the 20th ultimo, cruising in company with the Beagle, Lieutenant Commandant Newton, Cape Cruz bearing southwest about four leagues, brought to and examined a small armed schooner of about thirty-five tons, having three prizes in company. She proved to be a Columbian, duly commissioned, commanded by a Frenchman, and manned by Frenchmen and some others, apparently natives of the country to which she belonged. Her commission was dated at Carthagena last December; her prizes were examined by Captain Newton and found to be Spanish droguerss, except one, a large canoe, calculated to carry about twenty men, which boat had been taken on shore near the cape, where she had been abandoned, by a party they supposed to be pirates, on being chased by said schooner.

On the following day we stood in, with the Beagle in company, and anchored under the cape; Captain Newton and myself, as well for recreation as to examine the cape, landed with a small boat, but finding the walking bad, we again embarked, and proceeded along shore in search of some settlement.

Soon after getting out of sight of our schooners, (by doubling the cape,) a sudden and quick fire was opened upon us from among a thicket of mangrove bushes and rocks, with which the cape is bordered. The party was armed with muskets and blunderbusses, which were alternately fired upon us without effect; at the same time a firing upon us was opened from another quarter, from guns mounted on a high point of rocks a short distance ahead. Thus situated, with a cross-fire upon us, enabled only occasionally to return the fire of the party in ambush, as some of them would dodge from bush to bush, or rock to rock, (having for our arms but a fowling piece and one or two muskets,) we were induced to return to our vessels, which we did. It being late, we waited until next day. On the morning of the 22d Captain Newton and myself again set off, hoisting our colors upon the boat, as it was a fair presumption that, in consequence of a Columbian vessel being on the coast, some mistake on the part of the people on shore might have been made in regard to our character; but that proved to be groundless; for, having reached within the distance of their guns, they opened upon us with more apparent spirit and determination than before from a position inaccessible, apparently, in the rear from thickets of bushes and briars, and the same in front from a precipice of rugged rocks, and so commanding altogether, that to prevent the loss of lives, I directed both vessels to be warped round the cape, along an extensive reef, which almost encircles it, affording a smooth and shallow harbor. We did not succeed in getting within gunshot of the establishment until we had reached five or six feet

water, when we anchored. Lieutenant Farragut, with the marines and some seamen, was ordered on shore to endeavor to gain a position in their rear, to attack them or cut off their retreat before the schooners moored or their landing could be discovered by the pirates, as we had deemed the party we were about to attack. The officers of both schooners volunteered and accompanied the party on shore, one only being reserved in each schooner, and a sufficiency of men for the guns. Hoping to attract the attention of the pirates from Mr. Farragut's party, several shots were fired from the schooners, which drove the pirates into places of security behind the jutting rocks, where they seemed to be in considerable force—the shot being seen to strike among the rocks behind which they sat; and not until the boats were despatched to land in front, and Lieutenant Farragut's party was close upon them, did they abandon the advantageous position they occupied. They were pursued, but with so decided a disadvantage to the pursuers, from their want of knowledge of the passes, that none, unfortunately, were taken, except two old and decrepit beings, whose age and infirmities placed them beyond the merited chastisement their more active comrades, had they fallen in our power, would have received. A four-pounder, two swivels mounted on the heights, and some indifferent articles of small arms, were found. They, however, escaped with their muskets and blunderbusses, or else hid them in some of the numerous deep and intricate caverns to be found on the cape, in one of which various articles of plunder were stored, but of no value; however, enough to show the character of the wretches who infest that place. Human bones were found in the cave. We found eight boats, but not of a large size; their principal one was, no doubt, the one taken by the Columbian cruiser, as before stated, and the men armed with blunderbusses were, no doubt, her crew. From information derived from the prisoners, we learned that the captain of the gang was in prison in the interior of the island, for having burnt an English vessel off that cape. As a singular instance of the growing propensity of the present age for piracy, I have to inform you that even a woman and children were of this gang, belonging to the captain of them—a second Helen McGregor; and the old men, too, who can do nothing else, light up the signal fire, which was done in the present instance on our appearing on the coast. In another case a captain of a vessel informed me that he had been plundered by a gang of pirates under the following stratagem, viz: An old man—his bald head and hoary locks exposed to view—and a little boy to steer the boat, pulled or sailed alongside of his vessel; when it was too late he discovered that a strong party lay concealed in the bottom of the boat, to whom he had to surrender.

The female just mentioned was removed to some place of safety before the attack was made, (said to be the wife of the captain.)

Finding our pursuit of the pirates promised no success, I considered it unimportant to remain longer at the cape, having destroyed their means of doing mischief for a time; and taking into consideration the state of our officers and men, worn down by fatigue from a long pursuit over one of the roughest of countries I have ever seen, their clothes nearly torn off by bushes of impenetrable thickness, and their

shoes cut off their feet by sharp rocks over which they passed, I abandoned the place, bringing off the arms, &c., of any consequence, and setting fire to anything else that would burn. One large, well thatched house and three smaller ones were consumed, and a quantity of fishing nets and their furniture, which I have always observed to be part of the outfit of a piratical establishment; they are merely used for their immediate wants in procuring sustenance, where their real profession proves unfruitful and compels them to it.

I have written you a very long and full account of this affair, in order that you may be possessed of every information in my power to give, in the event of a question arising as to the propriety of landing and burning property on a foreign shore, and this case be noticed by the supporters of "territorial jurisdiction" (over uninhabited parts of the coast of Cuba, notorious only for murders and piracy;) it will be seen that your officers and men's lives have been jeopardized, and the flag of their country made a target for the lawless villians to fire at, at their pleasure, and which will continue so to be if any restriction should be put upon our landing in similar places, where no authority exists other than the will of the marauders themselves who inhabit those places.

I took the liberty of releasing the two prisoners, as there was no proof to establish them pirates, and I furnished them a boat, with the express condition that they should never appear again at the cape, and that I should take and treat as pirates any persons found there hereafter not furnished with a special license from the present captain-general of Cuba setting forth their character and occupation. This was taking upon myself perhaps too much, but it is now submitted to you, whether such a measure would not be proper not only in regard to that place but all others of a like position.

That there is a chain of intercourse with fishermen who live in such places and pirates I have no doubt, and it must be obvious from several cases of late. As regards those at the Isle of Pines they affect to know nothing of the robbery of the vessels your order to me mentions as having taken place there, although the very articles of the cargoes of those vessels I saw in their houses. At Cape Antonio, two years since, I found fishermen's huts filled with piratical goods, papers and letters robbed from different vessels, strewed about their floors. That fishermen as well as pirates, should be removed from all the capes, or other uninhabited parts of Cuba where the proper authorities can have no control, I think necessary, and will I hope, be the case.

Very respectfully, &c.,

LAWRENCE KEARNY,
Lieutenant Commanding, United States Navy.

P. S. In my report of the affair off Cape Cruz I forgot to mention that we were not either hailed nor were there any colors displayed by the party that attacked us. As regards our character they could have no doubt, for they had seen us communicating with an English ship-of-war close off the cape on the same day of our arrival. I was informed by the governor of Trinidad of pirates infesting the coast to the eastward of that place, and was induced to proceed within the

keys in pursuit. On my way boarded a small schooner belonging to Grand Cayman island, and the information before received was corroborated by her master. Under these impressions I reached Cape Cruz, and our reception there induced a belief that we had met the party complained of.

I am, very respectfully,

L. KEARNY.

Commodore D. PORTER,
Commanding United States Naval Forces in the West Indies and Gulf of Mexico.

No. 13.

SEA GULL,
Port Rodgers, August 16, 1823.

SIR: Agreeably to your request of this date, and for the reasons therein stated, you have permission to return to the United States, when you will report to the Secretary of the Navy, sending a copy of this order.

It affords me sincere pleasure to express to you my high sense of the important services you have rendered to the expedition I have the honor to command, and of your indefatigable zeal and unremitting efforts on all occasions and in every way that presented itself for the suppression of piracy.

It is my hope that they may be rewarded by your speedy advancement to a higher rank, and it would be highly gratifying to me, on your obtaining a proper command, to have you again under my orders.

With sincere esteem, your obedient servant,

D. PORTER.

Lieut. Com. L. KEARNY.

No. 14.

Letters and documents relative to the cruise of the United States ship Warren, engaged in the suppression of piracy in the Grecian archipelago, in the years 1827 *and* 1828.

UNITED STATES SHIP WARREN,
Off Milo, October 8, 1827.

SIR: In compliance with your instructions of the 23d ult., I accompaied the convoy about 180 miles west of the Cerigo, and after returning, fell in with the Lexington and relieved her, off Ceregotto, on the 3d instant.

The following day arriving at Carabusa, the piratical hold mentioned in your orders, we captured a boat with fourteen well armed men and one boy, to leeward of the harbor; the boat was soon after

cut adrift, and is lost, in chase of a suspicious brig making for the harbor to windward, which we succeeded in taking, and from her suspicious character keep possession of, with the view of sending her to the seat of the Greek government, having no instructions to dispose of prizes of this nature. She is a fine new vessel of about 180 tons, just launched and not yet fitted; she had scarcely any rigging on board, and had just left Spezzia with a kind of commission from the Greek secretary, (a copy of which I enclose as translated on board this vessel.) Being bare of almost everything, without pumps and leaky, I sent her to Suda, after taking out her officers and crew of about thirty men. This vessel was to have fitted out and augmented her crew in that piratical establishment, Carabusa. What her conduct would have been is left to conjecture.

Having sent a boat into Milo, to say, should any American vessel be there, or arrive during my absence, that we will return in a day or two to convoy them, should no other vessel be ordered. I shall return off Carabusa to communicate to the authorities your orders and instructions, which I have not been able to do from circumstances before mentioned.

After taking the brig, another equally suspicious vessel hove in sight, coming around the west end of Candia, which we pursued from that place until we got abreast of Ceregotto, where we unfortunately got becalmed under the island for several hours, while the chase, favored with a breeze, made her escape. From thence we shaped our course for Suda to refit the prize, but off Cape Spada, in the night, another suspicious brig hove in sight, which I imagined had left Carabusa that day, seeing us in chase to the northward after the vessel before mentioned. Believing her to be one of those pirates, I pursued her from thence until last night up the Gulf of Napoli, where she made her escape either into Spezzia or bearing away for Hydra. We, however, overhauled a vessel answering so fully the description of the one which robbed the American brig Cherub, I took immediate possession and took out her officers and crew. This addition of prisoners, making in all one hundred and two, rendered it necessary for the better safety of my vessel to put them all in irons, which I accordingly did. We examnined the vessel more particularly after daylight, and although her ornaments about the stern, her painting, &c., corresponds with a description I have of the pirate brig, I was induced to set her at liberty from some material facts not agreeing, she being a full rigged brig and her head differing from that in the description. However, from information from a Turkish prisoner found on board, she had robbed a French brig of the cargo on board, but in such a case I did not feel at liberty to detain her, the property not being identified in any way, besides being mostly Turkish. I accordingly released her and she went to Spezzia.

I have the honor to be, respectfully, &c., your obedient servant,

L. KEARNY.

Captain D. T. PATTERSON,
Commanding U. S. Naval Forces, Archipelago.

No. 15.

U. S. SHIP WARREN,
Off Miconi, October 31, 1827.

To the Governor and all the Primates of Miconi:

GENTLEMEN: In consequence of the repeated acts of piracy which have taken place by the people of your town upon American vessels, and the reports which have reached me of American citizens being murdered by the people of Miconi, I have now to inform you immediate explanation and full atonement is demanded of you.

Therefore, you are ordered to explain how these piracies are carried on, and what disposal has been made of the plunder landed in your town.

I do hereby direct that each and all of you come immediately on board this ship. Should you fail to do so, all the consequences must rest with you in respect to the town.

I will await your arrival, earnestly hoping you will not oblige me to use that force which is at my disposal.

Your obedient servant,

L. KEARNY.

No. 16.

U. S. SHIP WARREN,
Harbor of Miconi, November 4, 1827.

DEAR SIR: To relieve the distress of the females and children of Miconi, I beg you to proclaim that it is not my intention to fire into the town. Should any force from this vessel be sent on shore, the good people are requested to assist them in destroying pirate houses and property, and also assist in recovering stolen goods.

Be pleased, therefore, to say that no violence against the town is now intended, provided the good people will do all in their power to take the pirates and restore the plunder.

I am, respectfully, your obedient servant,

L. KEARNY.

TO AMERICAN CONSUL
For the Island of Miconi.

No. 17.

UNITED STATES SHIP WARREN,
Harbor of Miconi, November 4, 1827.

GENTLEMEN: I have received your letter of yesterday's date, but have not before had an opportunity of replying thereto.

The property and citizens of your respective nations in Miconi, will be, as far as is in my power, respected, in case of my being under the necessity of firing into the town to force the surrender of American

property piratically taken and held by its inhabitants. You will, therefore, oblige me with the names of citizens, and description of the property, of your nations endangered.

I must beg leave to remark, that the terms you apply to an act of this necessity being, as you say scandalous and unjust, is more applicable to the neglectful conduct of those who quietly submit to depredations of pirates.

I am, respectfully, your obedient servant,

L. KEARNY.

The CONSULS *of France, Austria, and Sardinia, at Maconi.*

No. 18.

UNITED STATES SHIP WARREN,
Harbor of Miconi, November 5, 1827.

Sir: In consequence of American property being unladen in your harbor openly by the hands of pirates, who are very numerous, and commit frequent depredations upon American commerce, I have to call upon you to use your authority and exertions to apprehend all persons engaged in such depredations, and also to order all property found, together with the persons, to be given up to the American consul.

The exertions of all good people are called for, and your protection and aid is particularly requested.

Any violence committed on the person or property of the American consul by these pirates, in consequence of his interference in securing American property, or other duties for the benefit of citizens of the United States, will be noticed and punished immediately.

The extent of this system of piracy found to exist among the people is now ascertained, and a careful watch will be kept over the transactions in this quarter of the archipelago.

I have the honor to be your obedient servant,

L. KEARNY.

To the GOVERNOR OF MICONI.

No. 19.

UNITED STATES SHIP WARREN,
Syra, November 7, 1827.

SIR: I have sent herewith a list of plunder taken at Miconi, and have put the articles on board the Cherub, from whence they were taken by the pirates of that place.

I was under the necessity of opening a fire upon the town, and securing the authorities, before any disposition was shown to give up the plunder. Two or three houses were struck, but no lives lost.

After the date of my last letter, and the circumstances detailed up

to that time, we examined Argentera in search of some pirate boats said to be there, but were not successful. We proceeded from thence to Suda, where we found the prize brig mentioned in my last letter. Having ascertained that her commission was as good as the rest of those under the Greek flag, I released her, warning her not to enter Carabusa.

We continued to cruise between Carabusa and Matapan, agreeably to your instructions, until hearing of the robbery of the Cherub and Rob Roy. On arriving off Milo, I proceeded on towards the scene of robbery, and, in passing by Milo, discovered an hermaphrodite brig standing down behind Argentera, which we pursued and sunk on the south side of Argentera. We fired about forty guns among the rocks, in hope of finding some of her crew. What good, other than destroying the vessel, was done has not been ascertained. She proved to be a Carabusa pirate, and is believed to be the vessel which robbed the Cherub. The people of Argentera made no exertions to apprehend the fugitive pirates.

On the 28th ult., between Tino and Miconi, fell in with an Austrian brig, stripped of almost everything by pirates. We towed her into Miconi, and gave her in charge to the Lexington, since which she has been restored to her captain, together with a quantity of sails and articles which I found in Miconi.

On the 31st ult. we took a mistico, which we have fitted out. She rows forty oars. I found her in possession of a small schooner with a Greek commission; and, believing she would soon be fitted out as a pirate, I took her away from the captain, giving him all the sails and spars of the pirate brig sunk at Argentera. We found another piratical boat at Miconi, which we brought off. The French, Austrian, and Sardinian consuls at Miconi talked of protesting against my operations at that place, but neither afforded me any information as to the system of piracy carried on there. The fact of an Austrian brig robbed off their island, and the sails openly landed in the store of Mermalecha, the chief pirate, is an evidence how much the services on this island are worth.

I have five pirates on board, and am collecting evidence. I will proceed from this to Milo, thence to my cruising ground, should no convoy offer.

I am, respectfully, your obedient servant,

L. KEARNY.

Captain D. PATTERSON, *U. S. N.*

Some of the pirates on board this ship are recognized by the crew of the Austrian brig.

No. 20.

UNITED STATES SHIP WARREN,
Off Andras, November 8, 1827.

SIR: Agreeably to your orders of the 7th instant, directing me to command the boat expedition, consisting of the Forty Thieves and

Cleftis,* I have to report that, having proceeded as far as the northwest point of the island of Tino, we discovered two caiques, of whose character we were suspicious. After nearing them sufficiently to hail, and ordering them to heave to, which they refused, I directed two muskets to be fired ahead of them, which in a few minutes they answered in a similar manner. At the same time a vessel was seen on our starboard bow, between us and the land; made for her, when within half pistol shot she fired two guns with grape and canister, and kept up a continual discharge of musketry for the space of ten minutes. During this time about thirty boats hove in sight, (which our pilot supposed to be her convoy;) these were running within hail of us, and discharging their muskets into our boat.

When we were on the point, from unavoidable necessity and for the preservation of our lives, of boarding this vessel, and the order given to that effect, a parley ensued, but the commander of this vessel, which proved to be an hermaphrodite brig, who had a boat astern, refused to send on board of us to ascertain our character, or permit one of our boats to go to him. In this situation, and fully impressed with the idea they believed us to be pirates, while the brig was wearing round we made sail and with the help of our sweeps got clear of her, not, however, without being chased by her, and a continued discharge of musketry kept up until they found their shot fall short. The brig then tacked and stood for her convoy.

We received several shot in our sails and one in the mainmast. A spent ball struck one of the men, and the pilot had a ball pass through his jacket.

We now made the best of our way for the piratical bay in the island of Andros, which we examined. We here surprised and took five pirates in a house pointed out to us as being owned by the leading piratical character of the place. Two or three of the men escaped from this house, and were fired upon by our men and marines without effect. At daylight commenced a search of the houses in the town, by permission of the primate; took off four small guns, some muskets, powder, ball and some ready-made cartridges, and sails from the house in which we found the pirates. From the beach, one large boat pointed out as piratical, and burnt another; made search for a piratical boat sunk in the harbor without finding her.

Very respectfully, sir, your obedient servant,

WM. L. HUDSON.

LAWRENCE KEARNY, Esq.,
Com'g U. S. Ship Warren.

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* Captured from the pirates.

No. 21.

Translation of an extract from "The Spectateur Oriental," Smyrna, November 7, 1827.

"The American corvette, which is at this moment in our port, has defended the interests of commerce with an energy deserving the greatest praise.

"Having been apprised that part of the goods plundered from American shipping was concealed at Miconi, he proceeded to that island, sent for the primate and eparch on board his ship, and not being able to obtain restitution by fair means, he opened his fire upon the town, when a certain quantity of the plundered articles was immediately sent on board. Three houses suffered, but no lives were lost. From Miconi the Warren made sail for Argentera, and from thence to Suda, constantly in pursuit of pirates who abound in those seas.

"The commander, learning from an English ship that fresh spoliations had been committed on the vessels—the Cherub and the Rob Roy—he therefore sailed for the place that had been pointed out to him as that where the plunder had taken place. Passing close to Milo he perceived from after the hermaphrodite brig that had captured and robbed the Cherub at Carabusa on her arrival in the archipelago, overtook her, and, after having firmly convinced himself of her identity, burnt her. Two days afterwards he fell in with an abandoned Austrian brig at sea; he took her in tow, brought her into this port, and had the pleasure of restoring her to the captain and crew. Among the property taken at Miconi were many sails and much cordage, taken from the same vessel, which were likewise restored. This brig (the Silencio) sailed from Smyrna.

"The indefatigable commander of the Warren afterwards took the necessary measures for the return of the Cherub to Smyrna, which vessel was likewise here, after having been plundered.

"He sailed again and captured at sea a large piratical mistico, all the crew of which he seized, and manned her from his own ship and sent her to cruise among the small islands. Off Miconi he captured another piratical vessel. Amongst the prisoners whom he has on board are the captain and crew of the recaptured Austrian brig, who recognized several of the villains who had robbed them and treated them so infamously by threatening to assassinate them. If the captains of ships-of-war could take similar energetic measures, that evil would soon have disappeared, whatever may be said of it."

No. 22.

Translation of an extract from the same paper, of December 8, 1827.

"The American sloop-of-war Warren, Captain Kearny, arrived here yesterday from a cruise in the archipelago in search of pirates

by sea and land. She passed up with two boats in tow, having taken and destroyed many others.

"It appears from the following details that Captain Kearny has done much for the honor of his flag and the protection of American commerce in these seas.

"Having sailed from Andros, where he effected a landing, he succeeded not only in discovering the pirates who had robbed the Cherub and Rob Roy, but, what was still more fortunate, the owner of the numerous mistics which infest the adjacent sea. In the house of this pirate were found fragments of the instructions and other papers of the Cherub, also many other articles recognized as belonging to those vessels. Not having been able to seize the culprit, the captain ordered his house to be blown up, which had lately been built on the rocks from the avails of a long course of piracy. This order was immediately executed. The search made by a detachment from the Warren for the chief of the pirates proved fruitless, but positive information was obtained of his routes, and that he might probably be found at Smyrna, whither he usually goes in person to dispose of his plunder; and, indeed, he was here a few days before, but has recently returned to Andros to resume his depredations.

"The inhabitants and primates of Andros, observing the manner in which the Americans punish those who attack their flag and commerce, have formally promised Captain Kearny that they will do their utmost to prevent the molestation of American vessels in the archipelago."

No. 23.

[Extract from a Boston paper.]

"When the Cherub, Captain Rich, left Smyrna, July 8, piracies appeared to be nearly suppressed, only one piratical vessel having been detected in the last four or five months, which was a Greek brig of about 200 tons, and 10 guns, which had been taken in the bay of Salonica, with goods of almost all nations, and carried into Smyrna by an Austrian vessel.

"It had been acknowledged by the Greek pirates that if two such vessels as the United States ship Warren, Captain Kearny, were cruising in the arches, piracy must be given up, for at night she was at one island and before morning at another, and there was no calculating to avoid her."

No. 24.

We, Francis Werry, his Britannic Majesty's consul in this city of Smyrna, do hereby certify that we have received from —— Kearny, esq., captain, commanding the United States corvette Warren, a tratta, captured by Captain Kearny from a Greek schooner, and which

said tratta, from documents duly authenticated and in our possession, is *bona fide* the property of Panaotti Confiatti, an Ionian subject, under the protection of his Britannic Majesty, and will be delivered up to him accordingly; the said tratta having been taken from the said Panaotti Confiatti by Greek pirates, on the 20th October last past.

Given under my hand and seal of office this seventeenth day of [L. S] December, one thousand eight hundred and twenty-seven.

FRANCIS WERRY, *Consul.*

No. 25.

Report of the cruise of the United States ship Warren, under command of L. Kearny, commenced agreeably to orders from Captain Patterson.

September 25. Sailed with a convoy of American vessels from Smyrna, which we separated from on the 28th, 200 miles westward of Cerigo.

October 24. Off Carabusa captured a piratical boat with 14 men and one boy. Same day captured a brig under the Greek flag, pierced for 10 guns, bound into Carabusa. From 4th to 24th cruising from Cape Matapan to Carabusa, touching at Milo for convoy occasionally.

October 25. Off Milo heard of the robbery of the American brigs Rob Roy and Cherub; same day chased a piratical 10-gun brig belonging to Carabusa, and sunk her at the island Argentera, crew making their escape into the mountains; cut away her masts, and, stripping her of sails and rigging, left her under water.

October 28. At Syra found the Cherub, and took possession of her. That evening the United States ship Lexington, under the command of Lieutenant Breese arrived, (Captain Booth being sick at Smyrna,) assumed the duties pointed out in the instructions of Captain Patterson, addressed to Captain Booth, and showed me by Lieutenant Breese. Proceeded to Miconi, leaving the Cherub in possession of the Lexington.

October 29. Between Tino and Miconi fell in with the Austrian brig Silencio, robbed of everything; towed her into Syra, and left her in charge of the Lexington.

October 30 *and* 31.—Cruising around Miconi, captured a large tratta (a piratical boat) capable of rowing forty oars.

November 1.—Came to in the harbor of Miconi, and on this and the succeeding day recovered some sails and property taken from the Cherub, and two cases of opium taken from the Rob Roy; also the sails and rigging of the brig Silencio, before mentioned. Four men were brought off by the inhabitants and one taken by us in the mountains, accused of piracy. Took possession of a boat belonging to the pirates living in this town, which we afterwards burnt.

November 7.—Returned to Syra and restored the plunder belonging to the Cherub, and the sails and rigging belonging to the Austrian

brig Silencio. The Lexington and Cherub sailed for Smyrna. Same evening got under way and sent the boats, under Lieutenant Hudson, around Andros. Blew up a piratical house at the end of the bay, near the north end of the bay, and raised a large twenty-oared boat which belonged to the owner of the house, and had been sunk to elude observation. The boat has since been recognized by the pilot of the Rob Roy as the same which robbed that vessel.

Until November 14, cruising around Jura and Andros; the people of Andros sent off a boat said to belong to pirates; found on board of her a twelve-pound carronade, and some tools with "B. Cherub" marked on the handles; this boat is one of those which robbed the Cherub.

November 18.—Arrived at Milo, and on the 27th the American brig Sarah and Esther arrived from Boston.

November 30.—Got under way with the Sarah and Esther, and six other vessels for Smyrna.

December 6.—Arrived at Smyrna.

After recovering the Cherub and executing the orders of Captain Patterson, which he had addressed to Captain Booth, relating to the property at Miconi, I should have returned to my station to the windward, but light winds from that quarter, and frequent calms prevailing from the 28th of October to the 17th of November, when we arrived at Milo, it was not in my power; and, therefore, availing myself of the opportunity of this detention, I continued to cruise in that neighborhood, as above stated.

All the officers engaged in these expeditions have conducted themselves with great zeal and prudence. To the particular good conduct and prudence of Lieutenant Hudson, charged with the expedition of boats to Andros, it is owing that many valuable lives were saved in an attack made on him in the night by a brig with a convoy of twenty or thirty boats, mistaking him for a pirate and opening a fire upon him, which, from the piratical appearance of his boats, no explanation or assurances served to check; he, therefore, after receiving a number of shot through his sails and some in his spars, a few passing through the clothes of some of his party, pulled off and effected the object of his expedition at Andros without losing a man.

All of the officers and men have been very zealous and indefatigable in the performance of their duties, and from unavoidable exposure and fatigue many have been sick. Of the lieutenants, only one was on duty for some part of the time.

The brig taken off Carabusa was released on the 15th of October, after ascertaining that the papers she sailed under were from a member of the Greek government.

The boat was cut adrift at sea in chase, her crew released at Argentera for want of sufficient evidence to authorize a trial.

There are nine Greek prisoners, under charge of piracy, now on board; they were taken at Miconi and Andros; no proof having yet been obtained of either of them being engaged in the robbery of American vessels.

L. KEARNY.

The following is a list of prizes destroyed or now in our possession:

1 ten-gun brig, sunk.
1 tratta of sixteen oars, burnt.
1 tratta of sixteen oars, recaptured and given up to the owners at Tino.
1 tratta of sixteen oars, sunk.
1 ten-oared boat, burnt.
1 tratta calculated for forty oars.
1 tratta of twenty guns, now in our possession.
Total 7.

No. 26.

The undersigned having been acquainted with Captain Lawrence Kearny, commanding the United States ship Warren, at the time of his station in the Mediterranean and cruise in the Levant, in the years 1827 and 1828, when piracies were committed in the archipelago, cannot refrain from paying him the tribute of my warmest thanks and acknowledgments for his unremitted and eminent services in protecting American commerce and suppressing piracies; and without his unremitting zeal and exertions, no merchantman would have put to sea without the greatest peril, and commerce would have been seriously interrupted. The merit of this officer has been honorably recognized and acknowledged by other nations, and a diminution of premiums of insurance on property bound to the Levant may be fairly ascribed to the efficient protection afforded by him and his flag to the merchantmen of this country and others, so much so that his services were complimented by European papers—

"That if there was another vessel of war commanded by as active a captain as the Warren's, no piracies would now exist in the Levant."

In testimony of which I subscribe my name.

B. ISSAVARDENS,
Of the house Issavardens, Stith & Co., of Smyrna.

NEW YORK, *4th day January*, 1834.

No. 27.

Extract from a letter dated at Smyrna, October 5, 1829, *from David Offley, Esq., United States consul at that place, to Lawrence Kearny.*

"Whatever may be said at Washington, or elsewhere, I know not, but at Smyrna and the archipelago, it is said you did more to protect American commerce, and to punish those who molested it, than all others put together; this is not only the opinion of the Americans, but of all nations, including the poor Greeks themselves."

No. 28.

Extract from another letter of the same, dated Smyrna, October 7, 1833.

"SIR: I observe your intention of asking of government compensation for the pirate vessels destroyed by you in the Archipelago. It appears to me it would have been better to have done so immediately after your return to the United States, or at least as soon as you discovered, on the settlement of your accounts, that your expenses on that service had exceeded your pay.

"Your own relation of the pirate vessels and boats destroyed by you, I am persuaded would be regarded by Congress as sufficient evidence of the fact; the log-book of your ship, and the testimony of the officers who sailed with you, might be added. If necessary, a declaration from all the merchants resident in this city, would be easy to obtain, stating the services you rendered to our commerce and that of all other nations, by your great activity in protecting them from pirates, and destroying the vessels and boats of some amongst the most daring of them. The pirates themselves have frequently declared that if there was one other corvette that would pursue them as actively as you did in the Warren, running your ship into places where it was not thought possible a ship could enter, that they should no longer be able to pursue their plundering. * * * * * * That the brig you sunk at Argentera is a notorious pirate, is publicly known, and notorious to all Smyrna as well as to your pilots. That you were entitled to salvage on the brig Cherub and her cargo, except so far as commanding a ship-of-war prevents it, has ever been my opinion.

"The breaking up by you of the piratical establishment at Miconi was one amongst the many important services rendered, besides the recovery of American property to some extent, and which would have been much greater had every one, like you, done their duty with zeal.

"Very sincerely, my dear sir, your friend,

"DAVID OFFLEY."

No. 29.

TREASURY DEPARTMENT,
Fourth Auditor's Office, October 12, 1830.

SIR: By the pay roll of the United States sloop Warren, it appears that you were paid $75 per month and six rations per day from 2d of December, 1826, to 3d April, 1829.

By law you were entitled to but $60 per month and five rations per day.

The difference, amounting to $633, has been charged to you on the books of this office.

Very respectfully, your obedient servant,

AMOS KENDALL.

LAWRENCE KEARNY,
M. Com. U. S. Navy, New York.

No. 30.

WASHINGTON, *January* 27, 1858.

DEAR SIR: It has given me much pleasure to have met you here, after so many years have passed, and to have it in my power to state that I entirely coincide with Mr. B. Issavarden's statement (whose signature I recognize) of your eminent services in the Grecian Archipelago, when that sea was swarming with pirates. Your energetic conduct and unwearied exertions had an immense effect in checking piracy, and in a great measure suppressing it.

I will merely add that, by your exertions in protecting our flag, you in one instance brought back from the pirates at Miconi nearly $10,000 value in opium plundered from the American brig Rob Roy, which you delivered to me, the agent of the American owners.

I remain, most truly, your obedient servant,

J. LANGDON.

Com. KEARNY, *Washington.*

No. 31.

LETTERS AND DOCUMENTS RELATIVE TO SERVICES WHILE IN THE COMMAND OF EAST INDIA SQUADRON.

Extracts from the original instructions of the Navy Department, dated November 3, 1840.

"SIR: Having completed your provisions and stores at Rio de Janeiro, you may, if convenient, stop at the Cape of Good Hope for refreshments; and then, should the prevailing monsoon be favorable for reaching the China seas by the western straits, you will touch at some of the ports on the west coast of Sumatra, causing it to be distinctly understood by the rajahs and others, that your visit is for the express purpose of punishing any aggressions or outrages that may have been committed on the persons or property of American citizens, and that the visit will be repeated annually by other vessels of the United States. * * * * * * *

"You will take all occasions to impress upon the Chinese and their authorities that one great object of your visit is to prevent and punish the smuggling of opium into China, either by Americans or by other nations, under cover of the American flag, should it be attempted.

* * * * * * * *

"Should a peace have been concluded between Great Britain and China previous to your arrival at your destination, or at any subsequent period, which will admit of your absence without detriment to the public interests committed to your charge, and time will permit your doing so without lengthening your cruise beyond the allotted period, you will visit such portion of the coasts of New Zealand and New Holland, as are most frequented by our whale ships, for the pur-

pose of giving every lawful protection they may require. At the same time you will ascertain whether they are, or have been, or are likely to be subjected to any injuries or insults from any nations or authorities from whom we have a right to seek redress for the past and security for the future.

The leading objects of your proposed cruise are:

First, to protect the interests of the United States and their citizens on the coast of China, most especially during the existence of the war of that country with Great Britain.

The second is the protection of the same interests as connected with the whale fisheries on the coasts of New Zealand, New Holland, and other places lying near the track of the squadron on its passage out and home.

And, lastly, the protection of our trade on the coast of Sumatra, and at such other places as you may visit during your cruise. * *

In the course of the long and varied cruise on which you are about to proceed, you will no doubt occasionally be placed in situations and circumstances which cannot be foreseen, and, therefore, cannot be provided for by special instructions. In all such cases, the department feels assured that it may confidently rely on your bravery, firmness, judgment and skill, and that the honor and interests of the United States may be safely entrusted to your care.

The leading policy of your government is peace with all nations, so long as it can be preserved without the sacrifice of the national honor, and by this you will regulate your conduct towards others. * *

Wishing you a prosperons cruise and a happy return, I am, sir, very respectfully, your obedient servant,

J. K. PAULDING.

Commodore LAWRENCE KEARNY,
Commanding United States Squadron,
Destined to China Seas.

No. 32.

CANTON, *May* 4, 1842.

SIR: An imperial officer of rank—an admiral—being desirous of paying you and your ship a visit, solicits from me this letter of introduction to your good self, supposing it may be useful in case of any mistake or misapprehension of the nature or object of his visit.

I am, sir, your obedient servant,

W. DELANO, Jr.

Commodore L. KEARNY,
United States Ship Constellation, Whampoa.

No. 33.

To His Excellency the Governor of Canton, &c., &c.:

Kearny, commodore of the United States squadron in the East Indies, has been officially informed by King, an American commer-

cial agent, that a mob of Chinese on the 7th December last attacked and burnt the dwelling of Heard, an American citizen, and plundered a large amount of dollars. That on the 16th ultimo a statement of losses, duly authenticated, was presented, with a respectful address to your excellency for reparation, to which no reply direct from your excellency or satisfactory explanation has been received by said commercial agent.

The commodore, as in duty bound, must aid the consuls of his country abroad in all lawful assistance, and he therefore submits to your excellency that, though a consul is supposed to be clothed with authority for commercial purposes only, that in his official character as a public agent of his country he has a right to interpose claims, and is entitled to that respect and courtesy which your excellency has so kindly extended to the commodore himself. He, therefore, prays your excellency to cause communication to pass through some more direct channel, as is the case, he understands, with regard to the English, and not by means of the Hong merchants.

The commodore desires to avoid the appearance of interfering with any fixed usages or customs of the provincial government, but requests to explain, that your excellency, considering the case before you, and acting upon the suggestion, would at once establish confidence and contentment in American citizens so long as the consular flag of their country is displayed in China, and the commodore will then be satisfied and contented. And in behalf of the United States and their ci izens, he respectfully protests against every act of the Hong merchants, or others in communicating with the American consulate, unless by authority of your excellency, where questions arise under the interposition of that office.

This is the commodore's address, with regards, &c.

Dated on board the United States ship Constellation, Canton river, February 7, 1843.

No. 34.

UNITED STATES SHIP CONSTELLATION,
Whampoa, Canton River, February 25, 1843.

SIR: I have the honor to inform you that the claims of Messrs. Heard & Co., for losses sustained by them, referred to in my letter No. 38, are still before the authorities and unsettled. I have, however, just been informed that the amount, which is $253,430 50, will be paid.

The circumstances of the mob in December were such that I considered it doubtful whether the foreigners in Canton can be safe for some time to come. The conclusion of the war has not afforded this hope. The burning of the factories is an evidence of the state of feeling on the part of the Chinese claiming the title of "patriotics." They have threatened to burn the rest of the factories, particularly those where the English dwell. The feeling here is certainly not good towards foreigners, and, as before stated, other troubles may be *expected before* long.

The American interests are no less in jeopardy than others from these circumstances. Although it is not designed to molest the American houses, their close proximity to the English makes the danger unavoidable when fire takes place.

A threat is out of burning a Hong where an English merchant resides, and another Hong where the English are making out the details of a commercial treaty. The American ladies have left Canton in consequence.

It is reported that the Emperor approves the course pursued by his "patriotic" subjects in Canton in burning the factories; but this is doubtful, and if so, it must be from false representations made to him, which is no uncommon thing with the Chinese.

In reference to this state of things, I need not say that the presence of this ship at Whampoa is regarded as important at this time, and has no doubt produced the favorable prospect, of which I am informed, of getting reparation for past losses, and may be a check upon designs at this time to commit similar outrages.

It is hoped that when the treaty shall have been duly ratified, and the new regulations for trade are established, that some measures will then be taken to guard against these constant causes of alarm. The British cannot hope to resume business as heretofore with any degree of safety in China until this is effected.

I have considered it my duty to apprise you of these matters, as an additional reason for my long stay in China; other reasons have been already communicated in my despatch No. 34.

The bearer of despatches from England, with the treaty ratified by the British sovereign, is expected here on the 10th proximo.

I have the honor to be, very respectfully, your obedient servant,

L. KEARNY.

Hon. SECRETARY OF THE NAVY, *Washington.*

No. 35.

To his excellency the Governor of Canton, &c., &c., &c.:

The undersigned, commodore commanding the United States squadron in the East Indies, has the honor of making this address on the occasion of his visit to Whampoa. With regard to the outrage and burning of the factories, and robbery of American citizens by the mob in December last, your excellency has been fully informed, and it is known to the commodore that your excellency has ordered payment to be made for remunerating the Americans for their losses on the occasion referred to.

He regrets, at this late period, to find his countrymen are not satisfied; that an alleged inability on the part of the Hong merchants to collect the amount due is the cause of the delay; and the commodore prays to bring this matter to the notice of your excellency as three months have already passed by, and four more months' delay required. The claimants state that the Hong merchants wish to settle with them by a bond payable four months hence; but this arrangement is not acceptable to them, and they decline those terms.

I, the commodore will not undertake to determine what shall be done in such a case, but leave it to your excellency to do what is right and just, that strict compliance should be observed in fulfilling the edict which your excellency issued on the occasion in reply to the respectful address made by Edward King, esq., United States commercial agent, on the 16th January last.

The undersigned has the honor to be, very respectfully, your excellency's most obedient servant,

LAWRENCE KEARNY.

Dated on board the United States ship Constellation, Canton river, March, 1843.

No. 36.

Extracts from a letter to the Secretary of the Navy, dated at Macao, April 21, 1843.

"I refer you particularly to my correspondence with the vice-consul for information on the subject of smuggling opium on the coast of China, which I am specially directed 'to prevent and punish should it be done by our citizens, or attempted by others under the American flag.' The facilities for transferring vessels and obtaining British licenses or passports to carry on the trade, will be an obstacle to the prosecution of the first object of my cruise. The department may also see that whatever its views may be in regard to that traffic, that the time has arrived when no measures can be carried out by which an end will be put to the trade. The Chinese being silent upon the subject, although there is an open display of the business in their harbors, and the British managing 'to get the trade legalized,' as expressed by Sir Henry Pottinger to be his 'hopes,' would seem to have had the influence that might be expected from the known profits to be derived. I am sorry to say my own countrymen in some instances are now engaged in it.

"I beg to call your attention to the vice-consul's statement on this subject on another account. You will perceive that the American crews are turned out of these clipper schooners on their arrival here from the United States. Some of them are thrown upon the consulate, and some I have been obliged to receive on board the ship Destitute. I am not aware that it has been done in an illegal manner, for I do not know what agreements were entered into before sailing. It may be that I have placed too much reliance in the importance of the China trade or the discretionary part of my orders; but I am now less disposed than ever to start with the state of our trade as the department will observe it now situated: first, the opening of the northern ports to British commerce by command of the Emperor, while the best friends of China are not so provided for; and again, the American opium mania having suddenly exhibited itself. * * * *

"I will return, visiting the northern ports now to be thrown open to British trade by the commands of the Emperor, and by show of some force of the United States in those ports, call attention to our flag."

No. 37.

29TH CONGRESS—FIRST SESSION—SENATE.

MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES,

IN ANSWER TO

A resolution of the Senate of February 25, 1845, *in reference to the correspondence between the commander of the East India squadron and foreign powers, &c.*

FEBRUARY 17, 1846.—Read and ordered to be printed, and that 1,000 additional copies be printed for the use of the Senate.

To the Senate of the United States:

I herewith transmit a report from the Secretary of the Navy, communicating the correspondence called for by the resolution of the Senate of the 25th February, 1845, "between the commander of the East India squadron and foreign powers, or United States agents abroad, during the years 1842 and 1843, relating to trade and the other interests of this government."

JAMES K. POLK.

WASHINGTON, *February* 16, 1846.

NAVY DEPARTMENT,
February 14, 1846.

SIR: In compliance with your direction, I have the honor to enclose copies of "all the correspondence between the commander of the East India squadron and foreign powers, or United States agents abroad, during the years 1842 and 1843, relating to trade and the other interests of this government," as called for by resolution of the Senate of the United States, bearing date of 25th of February, 1845, together with a schedule of said correspondence.

I have the honor to be, very respectfully, your obedient servant,

GEORGE BANCROFT.

The PRESIDENT.

Memorandum of papers, submitted under the following resolution, and in conformity with a schedule furnished to the Navy Department by Commodore Kearny:

IN SENATE OF THE UNITED STATES,
February 25, 1845.

Resolved, That the President of the United States be requested (if not imcompatible with the public interests) to furnish the Senate with copies of all the correspondence between the commander of the East India squadron and foreign powers, or United States agents abroad, during the years 1842 and 1843, relating to trade and the other interests of this government.

Attest: ASBURY DICKINS, *Secretary.*

No. 15.—(Singapore roads)—Kearny to Secretary, January 25, 1842.

[Enclosed in above.]

Kearny to King Selim, September 2, 1841.
King Selim to President United States, September, 1841.
Kearny to Rajah of Qualla and others, October 4, 1841.
No. 19.—Kearny to Secretary of Navy, April 8, 1842.
Published noticed to vice-consul, March 31, 1842.
Kearny to Vice-consul Delano, April 25, 1842.
Governor Ke to Hong merchants, April 15, 1842.
In No. 26.—Kearny to Reynolds, April 27, 1842.
Kearny to Ke, April 27, 1842.
Ke to Kearny, April 29, 1842.
Ke to Vice-consul Delano, May 6, 1842.
Ke to Kearny, May 16, 1842.
Kearny to Ke, June 4, 1842.
No. 21.—Kearny to Secretary of Navy, May 11, 1842.
No. 23.—Kearny to Secretary of Navy, May 19, 1842.
Kearny to Vice-consul Delano, June 23, 1842.
Delano to Olyphant & Co., June 8, 1842.
Olyphant & Co. to Delano, June 8, 1842.
In No. 30.—Delano to Kearny, August 19, 1842.
Delano to Governor Ke, August 13, 1842.
Delano to Governor Ke, August 19, 1842.
No. 32.—Kearny to Secretary of Navy, September 23, 1842.
In No. 34.—Kearny to Governor Ke, October 8, 1842.
Ke to Kearny, October 15, 1842.
Kearny to Snow, October 19, 1842.
Snow to Kearny, October 20, 1842.
No. 35.—Kearny to Secretary of Navy, November 15, 1842.
Heard & Co. to E. King, January 5, 1843.
King to Kearny, January 5, 1843.
Kearny to Heard & Co., January 9, 1843.
Kearny to King, January 9, 1843.
Heard & Co. to Kearny, January 5, 1843.

Sturgis to Kearny, January 7, 1843.
Kearny to Consul Sturgis, January 14, 1843.
Sturgis to Kearny, January 15, 1843.
King to Kearny, January 25, 1843.
King to Ke, January 16, 1843.
No. 38.—Kearny to Secretary of the Navy, January 16, 1843.
Edict of Quang-chow to the Hongs, February 3, 1843.
Kearny's despatch to Ke, (translated,) March 15, 1843.
Ke's reply to Kearny, March 17, 1843.
Kearny to Ke, April 13, 1843.
Ke to Kearny, April 16, 1843.
Kearny to Sturgis, (asking list of vessels,) April 19, 1843.
Sturgis to Kearny, (giving the same,) April 20, 1843.
Notice to American merchants and others, May 18, 1843.
Kearny to Sturgis, April 21, 1843.
No. 46.—Kearny to Secretary of the Navy, May 19, 1843.
Kearny to Sturgis, May 21, 1843.
Hooper to Kearny, July 7, 1843.
Kearny to Hooper, July 10, 1843.
Hooper to Kearny, July 11, 1843.
Kearny to Lord Paulet, July 11, 1843.
Paulet to Kearny, July 17, 1843.
Kearny's protest, July 11, 1843.
Hooper to Kearny, July 14, 1843.
Kearny to Ke Kuanoa, July 14, 1843.
Ke Kuanoa to Kearny, July 15, 1843.
Kamehameha III to Kearny, July 19, 1843.
Merchants of Oahu to Kearny, July 18, 1843.
Kearny to merchants, July 20, 1843.
Hooper to Kearny, July 19, 1843.
Kearny to Hooper, July 20, 1843.

No. 15.] UNITED STATES SHIP CONSTELLATION,
Singapore Roads, January 25, 1842.

SIR: I have the honor to acquaint you with the principal events which have transpired in the operations of this squadron since its departure from the Cape of Good Hope, and herewith enclose copies of such correspondence as I have had occasion to hold, agreeably to your instructions.

Whilst at the cape I received intelligence of an American vessel, called the North Star, said to have been lost at the Comoro islands, and that the crew had reached Majombo, in Madagascar. I attempted to touch at the port indicated, but was prevented by adverse winds, calms, and currents.

After my arrival at the Comoro islands, on the 26th August last, information reached me of a large ship being stranded at Mayotta, one of that group. It was said the North Star was also lost at the same island. Hoping, therefore, to hear something of the facts, as

well as to render assistance to the unfortunate persons of the above mentioned vessels, the Boston was despatched, and soon returned with the gratifying intelligence that the officers, passengers and crew had been saved and conveyed away in safety previous to her arrival. She proved to be an English vessel; but nothing could be ascertained there about the North Star.

Commander Long represents the natives of that island of bad character; and the visit of his ship, and the course he pursued in his intercourse, it is hoped, will be a check upon these people in case of any vessels under our flag visiting it or falling into their hands through misfortune.

As these islands have never been visited before by our ships of war, our visit will not be without advantage.

Proceeding from this group to the west coast of Sumatra, nothing of consequence occurred. On arriving off Quallah Battoo, on the 2d of October, I communicated to the several rajahs on the coast, personally, the object of my visit, and herewith enclose the purport of my communications; and I am happy to report favorably of the late conduct of the natives, who have been awed, perhaps, by the severe chastisement they received on former occasions, but not by any influence of the rajahs themselves, who have lost nearly all their power, from poverty alone.

No new act of aggression that I could hear of has been committed by the Sumatra people; but I am sorry to say that, on the part of our own trading countrymen, it is believed that *they* and *others* alike engaged in the pepper trade are in the habit of committing frequent frauds that may vie with those of the most crafty and unprincipled islanders in these seas, and so long as the practice is continued of using false weights, and thus setting examples to the ignorant, counteracting measures will be pursued by them when it is ascertained tained they have been wronged.

The use of quicksilver in the hollow beams of their scales, and clandestinely going by night to the shore, and filling up hollow weights with lead or shot, are some of the arts used.

This may be no part of my official duty to impart, but the evidence of the facts is to be found in the words of the parties themselves, uttered to the consul for the United States at Singapore.

The Dutch are advancing their possessions, warring with the natives, and no doubt aim at getting not only the control of the pepper trade, but of the whole island itself.

The French, also, are equally ambitious in respect to Madagascar. They have already availed themselves of an island, with a fine harbor, known as "*Nos-Beh,*" near the northeast end of Madagascar, and building forts and doing other matters, under the pretence of aiding in a revolution existing there; and the same may be said with regard to Mayotta, where they intend to establish themselves, if they can.

Having completed my services on the west coast of Sumatra, I sailed for Singapore on the 9th of October, touching, on my way, at Pinang for a pilot; but owing to light and adverse winds I did not reach this place until the 4th of November, where I have remained, to ascertain what I could learn, by the overland mail, of our political relations

with England, which were so much disturbed, according to the reports received.

Hoping soon to receive the desired information, before referred to, and to proceed accordingly, I have the honor to be, very respectfully, your obedient servant,

LAWRENCE KEARNY,
Commanding United States East India Squadron.

The Hon. the SECRETARY OF THE NAVY.

ON BOARD THE U. S. SHIP CONSTELLATION,
Off Johanna, September 2, 1841.

The commander-in-chief of the United States squadron at anchor off Johanna avails himself of this occasion to express his satisfaction for the hospitality and friendly disposition his majesty has manifested; and, also, for the kind treatment which, it is equally gratifying to know, his majesty has been pleased to show to his fellow citizens who have before visited the island of Johanna.

These acts towards Americans, of which the commander-in-chief has been made sensible, will impress the President of the United States with the same favorable feelings towards his majesty, and it will be the pleasing duty of the undersigned to communicate the same to his government.

The commander-in-chief wishes to impress upon the mind of his majesty that the United States are friendly to all nations; and, being at peace with them all, and allied to none, the government does not permit its officers to interfere in foreign wars, or, by furnishing arms or munitions of war, to strengthen the military power of one party to the injury of the other. And the undersigned hopes his majssty will believe that this principle, so just in itself, will explain why arms and munitions of war are withheld.

With these views, the undersigned returns his acknowledgments, in the name of the government of the United States, for the hospitality his countrymen have received at the hands of his majesty and his chief officers; and he now offers his best wishes for his majesty's health, prosperity, and long life, and a peaceful reign of his people—and bids him adieu.

LAWRENCE KEARNY,
Commanding U. S. East India Squadron.

His Majesty KING SELIM, *of Johanna.*

MASAMODO, ISLAND OF JOHANNA,
September, 1841.

SIR: I am very desirous to be good friends with you, because I have been, and always wish to be, useful to you and your nation.

I do all in my power to aid your citizens who visit my harbors for health or refreshments, and Johanna itself, I wish you to think, does not belong to myself only, but also to you and your citizens.

I have had a long, unjust war with my uncle, which war has injured my people very much, and during that time I lost the greatest part of my munitions of war; and hope that, having been always useful to your citizens, you will have the nobility and *generosity* of heart to assist me in my present unfortunate condition by the aid of some powder, muskets, and lead, that I may continue to shield my people, who alone look to me for protection.

Wishing for yourself and your country all happiness, and that you may long continue in peace and prosperity with all the world, I remain your faithful friend.

[Signed, in native characters, by King Selim.]

His Excellency the PRESIDENT *of the United States of North America.*

U. S. FRIGATE CONSTITUTION, OFF QUALLAH BATTOO,
October 4, 1841.

The undersigned has visited the west coast of Sumatra in order to ascertain if any piracies, or other aggressions on American vessels or their crews, have been committed by the rajahs or their people; and he has come to punish such as may have done so, or otherwise violated the just rights of American citizens trading with this coast.

He begs to assure the rajah that the American government will continue to send more ships of war for this same purpose; therefore the peace or troubles of himself and people must depend upon their own conduct, and a faithful compliance with engagements already entered into; which done, will always preserve both peace and friendship, and thereby increase the advantages of the trade so long existing between American citizens and your own town and neighborhood.

LAWRENCE KEARNY,
Commanding U. S. Naval Force in the Indian Seas.

To CHOOL-DOO-COH, *Rajah of Quallah Battoo,*
DATTOO MODAH, *Rajah of Soo Loo,*
The CHIEF, *and all other rajahs, of Muckie.*

No. 19.] U. S. SHIP CONSTELLATION,
Macao Roads, April 8, 1842.

SIR: Since my last letters of the 26th, 28th, and 29th ult., which I had the honor to address to you from this place, no important change in affairs has taken place with regard to the war upon China by the British forces, which forces remain much in the same order as then stated.

Their present design seems to be to create a permanent establishment at Hong Kong, and it occupies the principal attention of the British at this time—made in part to appear from one of the papers of the day, entitled "The Canton Register," herewith transmitted.

The above mentioned paper contains, also, other matters, which it may be important to inquire into, on the subject of "simulated papers," alleged to have been granted to British ships by the vice-consul of the

United States of America, to enable those ships to violate the laws of China. I shall deem it my duty to inquire and to apprize the department, as soon as it shall be fully ascertained, upon what grounds the allegations referred to rests.

I herewith enclose a copy of a notice I caused to be published, in consequence of a small vessel arriving at Hong Kong, under American colors, with opium, as stated in a paper published at that place. The subject seems to have awakened an unusual degree of interest, in a way which, although I cannot bring officially to your notice, yet I have thought it might be interesting to the department to understand, and hence I enclose the paper containing the communications.

Commander Long, in the Boston, sailed for Manilla on the first of April, with orders to see to the state of our provisions deposited there, and to afford protection to the American interests generally in that quarter, and will return here shortly.

I enclose a monthly report of this ship, and a list of the several changes which have taken place among the officers of this squadron since my last report of 27th July, 1842.

Having received several written applications from American citizens, and demands claiming redress from the Chinese for outrages committed upon them near Canton, at the disturbance caused by the operations of the British in May and November last, I shall proceed with the Constellation, on Monday next, as far as Whampoa, where, I have to inform you, trade still continues, and as soon after as possible visit Canton on that business.

I am happy to inform you the officers and crew of this ship, and those of the Boston, up to the time of her departure, continue to enjoy uninterrupted good health.

Very respectfully, your obedient servant,

LAWRENCE KEARNY,
Commanding U. S. East India Squadron.

The Hon. the SECRETARY OF THE NAVY.

U. S. SHIP CONSTELLATION,
Macao Roads, March 31, 1842.

SIR: The Hong Kong Gazette, of the 24th instant, contains a shipping report, in which is the name of an American vessel engaged in carrying opium; therefore I beg you will cause to be made known with equal publicity, and also to the Chinese authorities, by the translation of the same, that the government of the United States does not sanction "the smuggling of opium" on this coast, under the American flag, in violation of the laws of China. Difficulties arising therefrom in respect to the seizure of any vessel by the Chinese, the claimants certainly will not, under my instructions, find support or any interposition on my part, after the publication of this notice.

I am, very respectfully, your obedient servant,

LAWRENCE KEARNY,
Commanding U. S. Squadron in the East Indies.

The U. S. CONSUL, or VICE-CONSUL,
At Canton, &c., &c.,

U. S. SHIP CONSTELLATION,
Whampoa Reach, April 25, 1842.

SIR: Your letter of the 23d instant, and the accompanying documents, relating to outrages in Canton upon American citizens, have been received and carefully examined.

The nature of the cases submitted for my action, as well as the manner of obtaining redress for the wrongs complained of, call for serious reflection; and when I consider that no direct communication has ever been made to the imperial government by the United States, to my knowledge, a difficulty presents itself as to the manner and style in which the high officers of the Celestial Empire should be addressed, in any communications I may be called upon to make in presenting claims upon the high authorities or government, which last has, from time immemorial, been managed by a peculiar system of foreign and domestic policy different from all others. I wish it to be done with all due respect to them; while, at the same time, it is hoped that a corresponding consideration may induce those high authorities to adopt, in the same manner, what comports with the dignity of the United States, which, under the circumstances of this case, I have the honor to represent.

Therefore, as a preliminary step, and one of indispensable necessity to the further prosecution of the business placed in my hands, I submit the subject to you, and I ask this information. I will also add, that having heard, while in the pursuit of my business on the ocean, that American citizens had suffered wrongs committed in Canton by his imperial majesty's officers and soldiers, my duty compelled me to anchor here to inquire and obtain further information, and seek an explanation, equally due to the imperial government and the Chinese people as it is to the United States and the innocent citizens thereof, who have been so severely injured in Canton.

Very respectfully, your obedient servant,

L. KEARNY.

WARREN DELANO, jr., Esq.,
Vice-consul of the United States.

[Translation.]

Ke, Minor Guardian of the heir apparent, President of the Board of War, Governor of the provinces Kwangtung and Kwangse, issues this order to the Hong merchants:

I have received from Mr. Delano, the American consul, the following duly authenticated address, [which is here introduced, with the substance of Commodore Kearny's notice of the 31st of March:]

This having thus come before me, I find, on examination, that the Americans have acted in a manner most highly respectful and obedient. Their vessels hitherto engaged in the commerce of Canton have always been confined to the legitimate and honorable trade, and never concerned with the carrying of opium. This is that which all the

people of Canton know, and of which, also, I, the govenor have the fullest assurance.

Our Celestial dynasty cherishes tender regard towards men from afar, and all good foreigners it treats with the greatest liberality. In managing the affairs of the foreigners, at present, it is my bounden duty, as governor, to treat the English with the same tenderness as I do others, if they truly abide in their legitimate and honorable trade, and create no more troubles. All other foreigners, besides them, hitherto observant of our laws and regulations, have for a long time rested in the midst of our equal benevolence. There can be no cause for disquietude — none for suspicion.

That which is said, in the address, of a report in the Gazette about an American ship being engaged in carrying opium, is probably a mere report, made up by some vagrants, for purposes of deception. It is by no means certain that any such thing exists. There is only a chance in ten thousand that, of the many sailors, some may have brought opium without being detected.

The said nation having had its strict prohibitions, could never have permitted the carrying of opium. However, it is incumbent on the said consul to make clear investigation, and stop the practice.

Concerning the recent arrival of two ships-of-war, which have come solely for the protection of vessels and merchants engaged in the legitimate trade, I, the governor, entertain no suspicions of their havin any sinister object.

All those who belong to the said nation's ships of war, and for merchandise, ought, as formerly, with glad hearts, and without suspicion or concern, to engage in their commercial pursuits.

Wherefore is issued this edict. On its reaching the Hong merchants, let them take the foregoing particulars, and communicate them to the American consul, (Mr. Delano,) and let them require the said consul to communicate the same to all the foreign merchants for their information.

Haste! Be quick.

April 15, 1842.

U. S. Ship Constellation,
Whampoa Reach, April 27, 1842.

Sir: You are requested to bear the accompanying despatch to Canton, for the governor.

As it is possible some trifling follies of ceremony may interpose your delivering it to a government officer, I wish to have you understand, first, that a communication sent by the consul through a Hong merchant (intended for the governor) has never been heard of since; and that was in May last.

Therefore, you are not to give it to any one unauthorized to receive it, or unless it shall be clearly ascertained that the despatches from the British are conveyed in the same way, or by the Hongs.

You can wait until 4 p. m. for this purpose, and if no way offers to secure the delivery safely to the governor, (and of which you will take great care to provide,) you will return it without delay.

Should any difficulty arise that cannot be arranged in the most friendly manner, it is desirable not to press the subject; you will avoid this by stating that you will return to the ship for further instructions from me.

Respectfully, your obedient servant,

LAWRENCE KEARNY.

Lieutenant J. G. REYNOLDS,
U. S. Ship Constellation.

U. S. SHIP CONSTELLATION,
Whampoa Reach, April 27, 1842.

The undersigned, commanding the U. S. A. squadron in the East Indies, is charged by the government of his country with the important duty of protecting the lives and property of his countrymen engaged in honorable pursuits and lawful commerce. If they are treated with indignity, or are plundered by pirates on the seas, it is his bounden duty, wherever he arrives, to manage these affairs so as to give security to his countrymen, and to maintain the honor of his nation. With all men, every where, he must endeavor to be at peace; conforming to all their just and rightful usages.

When leaving his country he was especially charged to instruct always, when on the high seas his officers and men in their profession, and to rescue and return home any distressed shipwrecked mariners found on desolate islands; and on his arrival in China, it was to be his first object to inquire regarding the smuggling of opium by his own countrymen, and not to allow them, or others under his nation's flag, to engage in that contraband trade.

On arriving in China recently, his countrymen certified to him, in due form, that in the spring of last year, when the English attacked Canton, they were alarmed and anxious to remove to Whampoa to avoid the troubles; that, to prevent this, the Chinese high authorities repeatedly issued edicts giving assurances of protection, and that on the 20th of May the prefect issued a special one, in which he declared—

"That you, who have always been respectfully obedient and long enjoyed our commerce, the high officers of the celestial dynasty, in fulfilling the gracious pleasure of his imperial majesty towards foreigners, will give full protection to the utmost of their strength; and that, should native robbers or bandits come out to plunder or molest you, they shall be punished with increased severity; and any goods carried off shall be restored, so that the smallest loss shall not be sustained."

Two of the merchants trusted to the faithfulness of the promises of these high officers, and remained unconcerned, without fear. But, unexpectedly, the officers and soldiers of your country, disregarding all distinctions, broke into the factories and seized one of the merchants, Mr. Coolidge, and carried him into the city and kept him in custody. The other merchant, Mr. Morss, seeing these fearful proceedings, got ready two boats, hoping to escape with his clerks and some of his papers in separate boats. One of the boats, in which Mr.

Morss was, did escape unharmed, but unfortunately, the other, in which were ten men, was attacked by soldiers soon after she left the factory. One man, named Sherry, was lost, and his body has never since been seen. Another, Mr. Millar, was nearly killed, having received many and very severe wounds. The remaining nine were all injured—some more, and some less. These men, bound with chains, were led into the city and delivered over to the custody of the criminal judge; and were, with Mr. Coolidge, after they had all been recognized as Americans by his excellency, consigned to prison. At that time the American vice-consul, Mr. Delano, sent in an address to the high authorities, demanding their release; to this address no reply was given. After the lapse of two days the men were released from prison, but left unprotected.

Again, in November last, Mr. Edwards and four men, going from Whampoa to Canton in a ship's boat, having missed their way, were seized by officers and soldiers, heavy chains were put around their necks, and they were led into the city, and, after having been severely injured, were set at liberty.

The undersigned hereby begs his excellency to have the guilty offenders brought to justice, the injuries redressed, and the unsettled losses repaired; then he and his countrymen will be satisfied; unsuspecting confidence secured for the future; national honor maintained; and the two countries remain at peace with each other.

LAWRENCE KEARNY.

His Excellency the GOVERNOR OF CANTON, *&c.*, *&c.*

An official reply to the honorable the Commodore, given by Ke, minor guardian of the heir apparent, President of the Board of War, Governor of Kwangtung and Kwangse, &c.

On the 28th of this month your despatch was received and fully understood. The imperial kindness to foreigners is, I conceive, universal. Especially do the civil and military officers of this province fulfill the sacred pleasure in giving security and protection to the merchants of your country, always respectfully obedient.

Last spring, when the English created disturbances and joined battle at Canton, amidst the confusion of armed men, Mr. Morss and others took to their boats, but did not hoist the American flag, and there being nothing to distinguish them was the occasion of their being mistakingly seized by the officers and soldiers, and also of their being wounded. On clearly ascertaining that the men belonged to your country, they were delivered to the Hong merchants, who were faithfully to instruct them, carefully cure their wounds, and then send them to Macao. There was no mention made at that time, by Mr. Morss and the others, of the loss of Sherry.

Concerning the things of Mr. Morss and the others which were missing, and which were not severally returned, I, the governor, gave repeated injunctions to Pwankequa to offer large rewards, and diligently to seek for them. One book was found and returned last year,

and the handbill for the reward Mr. Morss has seen. As to the books still missing, further rewards were offered and examination was made. Of this, both the Chinese and foreigners are well informed. I beg again to examine and inquire.

Always hitherto, I, the governor, have treated men with sincerity and good faith, never deceiving them. Hereafter, also, to all the merchants and people in their intercourse and commerce, I will instruct and direct the officers, civil and military, always, in all affairs, kindly to give security and protection, not allowing them to create more trouble. Therefore be at ease; and I beg you to instruct all the merchants of your country not to entertain suspicion or anxiety. Such is my hope.

With considerations of regard, this communication is made.

APRIL 29, 1842.

An edict from Ke, minor guardian of the heir apparent, President of the Board of War, member of the censorate, Governor of Kwangtung and Kwangse.

It is authenticated that the American vice-consul, Delano, has presented an address saying that he had, on that day, received a letter from the commodore of his nation's ships of war, calling on him to inform all the merchants of his country that, the previous day, one of the ship's boats having reached Esham, was two or three times fired on with shot from the guns of the fort; also calling on him to inform his excellency, that he might give an early reply. The vice-consul, as it was right and proper to do, also declared that his country had always been respectfully obedient, and that the said boat carried its national flag; and therefore he desired to know why she was fired on from the forts, and, if any, what answer was to be returned to the commodore.

On examination, I find that America has always been respectfully obedient; I, the governor, therefore, in fulfilling the pleasure of his imperial majesty, kindly to regard men from afar, have always given them security and protection.

On the 3d instant, between 12 and 1 o'clock p. m., a boat having proceeded from Whampoa, by the small channel, sounding north and south across the river up to the barrier, and the soldiers having in a proper manner admonished her to stop, and she not consenting, therefore the guns of the fort were fired.

The barrier at Esham, stopping up the channel, was built by the Chinese officers, gentry, merchants, and people, in consequence of the troubles with the English, and for the protection of the provincial city. After the troubles cease, then the channel will be again opened as formerly.

The foreign merchants, in the quiet and peaceful pursuit of their business, when proceeding from Whampoa, ought, after passing the barrier, to go directly to the foreign factories. The boat on the 3d instant could have had no necessity for cruising about and taking the

soundings. The soldiers having repeatedly gone and admonished her to stop, without her doing so, feared that the people in her were robbers, carrying a borrowed flag, and having some sinister purpose; and therefore they twice opened their guns, which never would have been done had she been in her place and not cruising about.

Hereafter let all the boats be informed that, if in the quiet pursuit of their business, they ought to proceed directly from Whampoa to the city, and not go into all the channels to take the soundings; and I, the governor, will give command to all the officers and soldiers to abide by their duty. Then both the one and the other will, all alike, quietly engage in commercial pursuits, together enjoying great peace. I, the governor, will always treat men with sincerity and good faith; and the Celestial Empire and America, long bound together by favor and justice, will be without dislike and without hatred.

I have heard that the newly arrived commodore manages affairs with clear understanding, profound wisdom, and great justice. Therefore, take this my explanation, and carefully communicate it.

This is the edict.

MAY 6, 1842.

An official reply to the honorable the Commodore, by Ke, minor guardian of the heir apparent, Governor of the two Kwang; communicated in order to explain the case in detail.

The several particulars of your despatch before received have been already replied to; but fearing they were not explained sufficiently in detail, I now again make this explanatory communication.

Concerning the things lost last year by Mr. Morss and others, and concerning wounds received by Mr. Millar and others, it is to be remarked, that on account of the disturbances created by the English at that time upon the river at Canton, the impossibility of making distinction between one person and another led to the mistaken seizures

Having, on inquiry, ascertained that the wounded persons were Americans, it then became an incumbent duty soothingly and mercifully to heal them; and concerning the things lost, commands were early given to the Hong merchants to act and manage well. But if Mr. Morss and the others are still unsatisfied, the said Hong merchants are to be inquired of, and you, the commodore, will decide the case in accordance with what is just. Concerning the loss of Sherry, as stated in the despatch, Mr. Morss and the others said not one word at the time. And supposing the case really to be as stated, it is to be remarked that just at that time the fighting at Canton, on the river, had commenced, and of the soldiers and people many were the dead. How, then, could he be secured and protected? You, the commodore, must clearly understand this.

Mr. Coolidge, at the time, gave to Elliott a list of the things he had lost; and $30,000 were paid by the Hong merchants, and passed over to him by Elliott.

Mr. Edwards and the four men in the boat, by mistake, went up the western passage, and their thus not conforming to the old regula-

tion was the cause of their being mistakenly seized by the officers and soldiers. I have, on inquiry, ascertained that there was for it no other reason.

These things are equally known both by the native and foreign merchants and people; and I again, as bound to do, state them in detail for your information.

Again, according to the fixed regulations of the Celestial Empire, foreign merchant vessels are permitted to come to Whampoa; the ships of war, however, have always anchored in the outer seas, not being permitted to enter Whampoa. Now, the American ships of war have already been at Whampoa half a month, and the people and soldiers are not without suspicions and apprehensions.

But on the 9th instant the admiral, going on board these ships, observed that your behavior in intercourse with him was extremely respectful and civil, so that it is apparent that the words of the people are unworthy of credit. Yet, by long anchoring at that place, suspicions will be unavoidable. By your compliance with the fixed regulations, and early proceding to the outer seas, we shall promote harmony and good will, and forever enjoy fullness of peace.

For this I, the governor, ardently hope.

With considerations of regard, this communication is made.

MAY 16, 1842.

The foregoing is a faithful translation of the original Chinese.

E. C. BRIDGEMAN.

JUNE 4, 1842.

Commodore Kearny, commanding the United States America squadron in the East Indies, makes this second communication. Your excellency's favors of the 29th April and the 18th of May have been both received, and attentively perused. The several particulars, obligingly detailed in your replies, regarding the injuries and losses of life and property, have been minutely and carefully examined by me, the commodore.

As to the loss of life of Sherry and the imprisonment of certain American citizens, these being the results of mistakes, it would be as difficult to prosecute at this late period as it would be hard to punish the authors thereof; and therefore these misfortunes must, I conceive, be alike deplored by all who are acquainted with them.

The statements made by Mr. Morss regarding the several losses sustained by himself, Mr. Millar, and others, by the seizure of the boat of the American ship Morrison, Captain Benson, have been carefully examined by me, the commodore; and I have directed Mr. Delano, the United States vice-consul, to inform the Hong merchants of the full amount claimed by me, and to receive the same and distribute it to the several persons, Morss and others, as indemnity for the losses they sustained by the seizure of the Morrison's boat.

Having to decide in accordance with what is just, as intimated in your reply, I have not failed to regard the liberality and confidence

displayed by your excellency; and my claim for remuneration, being limited to actual losses, will, I hope, be satisfactory to your excellency.

With assurances of respect.

To his Excellency the GOVERNOR OF CANTON, *&c.*, *&c.*

No. 21.] UNITED STATES SHIP CONSTELLATION,
Whampoa Reach, Canton river, May 11, 1842.

SIR: The American ship Horatio, for New York, affords the first opportunity, since my arrival in the river, that has offered for writing to the department.

My last letters, Nos. 17, 19, and 20, from Macao, (duplicates herewith transmitted,) will inform you of my arrival at that place, and of my object in proceeding up the river with this ship, and despatching the Boston for Manilla.

The Boston has just returned from that service, and is now at this anchorage. Commander Long reports favorably of our commercial relations at Manilla; and for other information from that quarter I beg to refer you to copies of letters and extracts herewith transmitted and referred to in the index.

It will be gratifying to the department, I presume, to learn that my presence in the river, even as high as Whampoa, has not given offence to the high authorities of Canton, (no indication of it, however, has been observed;) but, on the contrary, the admiral, who ranks with the governor, has been on board on a visit. He was received with the highest honors known to our navy, and was otherwise made sensible of the friendly disposition of the United States towards the imperial government. He seemed well pleased; and, after a close scrutiny into everything belonging to the armament of this ship, he visited the Boston.

These are events unknown to history, both with regard to foreign ships of war lying at Whampoa, as well as that of a Chinese admiral visiting one. The case of the British ships, in their attack upon Canton, is the only exception to the former that I can ascertain.

In addition to this important change of policy in our favor, I have also the satisfaction of informing you that a channal of communication with the high authorities, comporting with the dignity of the United States, and the imperial government, has been opened; and it will be my duty and pleasure to transmit the whole of the correspondence with regard to the claim now before his excellency the governor of Canton, for losses by American citizens, as soon as the cases are adjusted.

It was first attempted to give the old direction to my communication, through the Hong merchants, which has been successfully resisted by me; and I have the pleasure, as is before stated with regard to the channel of communication, to inform you a despatch is carried up and delivered, from the hand of one of the commissioned officers of this squadron, into the hands of an imperial officer of the same grade, and the reply is returned by the same, and delivered by him on board the Constellation.

The original edict of the governor cannot fail to be an interesting document, and it will be transmitted, with all others, translated for the department, in due time; but to avail of this opportunity to acquaint you with the spirit and disposition that is exhibited on the part of his excellency, I enclose a translation of the same. Also a translation of another communication respecting an event which took place on the 3d instant, of a boat being fired upon, under a mistake, as has been represented by his excellency; and it may be important for the department to know that the difficulty is satisfactorily and definitely settled, as well as to know our commercial relations here are on the most favorable footing, as well as in other parts of the India and China seas; and, so far as I can understand, the American flag is everywhere respected; and with regard to the present state of feeling in this quarter, the time would seem propitious for the introduction of a government agent, but separated from commercial pursuits, which are so inconsistent with the ideas of these high officers, in points of respectability and standing.

The appearance of some of our large class ships upon this coast, and a more frequent visit of our vessels, now that the river is open, would seem to claim attention, and the propriety of such a step is most rerpectfully submitted.

The British squadron has been increased by the addition of a frigate, a steamer, and also a number of transports from India; but it is understood there will not be an attack made at present upon Pekin. The design seems to be to operate between that city and Canton, investing the different rivers and canals in a way to cut off the supplies on their way to the capital.

As I have not fallen in with the British squadron, it has not been in my power to give you a detailed account, except what has been derived from the public papers of the day, already transmitted, as to its force, &c.

The opium trade is carried on more openly than hitherto. Many of the vessels engaged in it are at this anchorage, of which fact no notice is taken by the authorities.

The publication issued by me concerning that traffic under the flag of the United States has had the effect of restraining one or two small schooners from hoisting our colors; and I am pleased to inform you that there is no evidence of either the citizens of the United States, or their vessels being engaged in that trade.

Under the present circumstances, and with regard to my instructions in reference to the continuance of the present difficulties between the British and Chinese, I shall feel constrained to delay my departure from this coast during at least the time the river remains open, and our valuable trade exposed at this place. As this course is presumed to meet the views of the department, I shall necessarily be governed by future circumstances, with respect to the performance of other duties, and extending my cruise, which, in point of time, expires in twelve months from this time.

I forward by this opportunity the fleet surgeon's report, showing a a continuation of good health enjoyed by the squadron up to the last quarter; and I am happy to say both ships are free from sickness at

this time, and the officers and crew are contented, and much improved in good order and discipline.

I have the honor to be, very respectfully, your obedient servant,

L. KEARNY.

The Hon. the SECRETARY OF THE NAVY,
Washington.

No. 23.] UNITED STATES SHIP CONSTELLATION,
Whampoa, May 19, 1842.

SIR: I had the honor to transmit my letter Nos. 21 and 22 for your information, by the Horatio, dated 11th and 13th instant, duplicates of which will be forwarded by the next vessel.

The present occasion allows me briefly to state, that with regard to the claims I have had placed in my hands by American citizens, at Canton, for the purpose of obtaining redress for injuries done them by the Chinese in the disturbance the British occasioned at Canton, last spring, the governor has submitted the merits of the case to my decision, and so far as regards the seizure and wounding of the persons, declares it was done under mistake, "their being no way of distinguishing one person from another, and the boats not having the American flag," which was the case. I hope to be able in a few days to transmit the documents relating to this affair, showing the same to be settled, so far as as I have made demands for reparation; the death of Sherry, who was one of the sufferers on that occasion, being a different point, and one that, for reasons that will be made to appear, will be referred to the department.

The good feeling which subsists has been again manifested on the part of the Chinese by further visits of the high officers, since the admiral mentioned in my last letter; the next officer in rank, equal to a commodore in our navy has been on board, besides other mandarins in company.

The claims before referred to being settled, the squadron will sail to the north, *via* Hong Kong, Chusan, &c., &c.

I have the honor to be, very respectfully, your obedient servant,

L. KEARNY.

The Hon. the SECRETARY OF THE NAVY,
Washington.

UNITED STATES SHIP CONSTELLATION,
Macao Roads, June 23, 1842.

SIR: You will receive herewith sundry papers from Messrs. Olyphant & Co., merchants in Canton, on the subject of their claims for the seizure of the Morrison's boat.

I beg leave to protest against your proceedings with regard to the payment of the sum of seven thousand eight hundred dollars, on account of any settlement of mine with the provincial government, for

it was not to be paid, except under conditions which have not been complied with.

Mr. Morss, Mr. Millar, or any one else connected with the house of Olyphant & Co., cannot hold the money you paid contrary to my instructions, and continue to petition the provincial government, after I had finally (so far as I am concerned) settled the claims upon it of American citizens who had put their business into my hands.

I maintain that my final communication of the 4th instant, to the government of Canton, cannot be thrown aside, and new grounds assumed by the claimants.

It is their right, if not satisfied, to enter a protest against my proceedings, and, through the government at home, to renew, if occasion shall require, a correspondence with the provincial government.

And it will be your duty to protect me in what may seem just and proper, as I placed the papers in your hands.

I am, very respectfully, your obedient servant,

LAWRENCE KEARNY.

W. DELANO, jr., Esq.,
United States Vice-consul, Canton.

CONSULATE OF THE U. S. OF AMERICA,
June 8, 1842.

GENTLEMEN: In compliance with the instructions contained in the letter of Commodore Kearny, dated 3d instant, copy of which is enclosed for your information, I beg leave to advise you that the Hong merchants are holding, subject to my order, the sum of $7,800, (seven thousand eight hundred dollars,) upon your giving me a receipt for the amount in full for all claims upon the Chinese government for yourselves, Mr. Morss, Mr. Millar, Mr. Taylor, and others, in the boat of the Morrison at the time of her capture in May, 1841.

In consideration of the injuries suffered by Mr. Millar, the Hong merchants have volunteered to pay to him the sum of $2,200, (two thousand two hundred dollars,) in addition to the amount demanded by Commodore Kearny, on condition that he acknowledges it in full satisfaction of all claims for injuries received by him at the hands of the Chinese soldiery in May, 1841. And I will thank you to acquaint Mr. Millar of the disposition of the Hong merchants on this point, and advise me if the sum offered by them will be acceptable to him.

I remain, gentlemen, your obedient servant,

W. DELANO, Jr.,
Vice-consul of the United States of America.

Messrs. OLYPHANT & Co., *Canton.*

CANTON, *June* 8, 1842.

SIR: We enclose receipt for the sum awarded us and others, (for losses of books, &c.,) on the part of the local government, as reported

to us by your letter of to-day, which we acknowledge, with its enclosures, and request the sum to be paid to the bearer.

We will refer the offer you make on the part of the Hong merchants (of a further gratuity of $2,200) to Mr. Millar, and, on receipt of his reply, will communicate the same to you. That gentleman will of course decide on a claim which is exclusively his own, as will the other parties, his fellow sufferers, whose (as we think just) demands have been ruled out by Commodore Kearny. It is not for us to decide whether the course pursued by Commodore Kearny has not given the claimants a right of recourse against himself and his advisers, in addition to their prior lien on the local government.

We are, sir, your obedient servants,

OLYPHANT & CO.

W. DELANO, jr., Esq.,
Vice-consul, &c., &c.

CONSULATE OF THE U. S. OF AMERICA,
Canton, August 19, 1842.

SIR: Subsequent to your departure from Whampoa, with the squadron under your command, Messrs. Olyphant & Co. petitioned the provincial authorities on the subject of injuries received by persons on board one of the boats of the American ship "Morrison," off Canton, in May, 1841. His excellency the governor then addressed me through the Hong merchants, desiring to be informed of the nature of the settlement made by you at Canton; and, for your information, I beg to hand you enclosed copy of my communication in reply to his excellency the governor, under date 13th August instant.

Mr. Millar, who suffered in the affair of the boat, in May, 1841, having called upon me, and expressed his wish, received the sum of money volunteered to be paid by the Hong merchants. I successfully exerted myself to recover the amount, and have now to hand you enclosed copy of his letter of this date, expressing himself satisfied with the compensation he has received, and acquitting the Chinese of any further claims. Further, I have to hand you, herewith, copy of a communication, under this day's date, acquainting his excellency the governor of the receipt of the last letter from Mr. Millar.

I remain, sir, your obedient servant,

W. DELANO, JR.

Commodore L. KEARNY, *&c., &c., &c.*

CONSULATE OF THE U. S. OF AMERICA,
Canton, August 13, 1842.

SIR: I have received, through the Hong merchants, your excellency's communication, dated on the 16th of the 6th moon, upon the subject of certain claims by Mr. Morss and others, for compensation for losses and damages sustained by the capture of a boat of the American ship Morrison, by the Chinese soldiery, in May of last year, and inquiring in what manner the matter was considered settled

by the American commodore, (Kearny,) to whom it was referred a few weeks since.

In reply, I beg to state to your excellency that the commodore, after a careful examination of the subject, decided that the claims of the sufferers should be allowed to the following extent:

For a chest containing the books and papers of Messrs. Olyphant & Co., say	$5,000 00
For the books and papers of Mr. Millar	1,000 00
For clothing and other property of Mr. Millar	600 00
For clothing and other property of Mr. Taylor	400 00
For clothing and property of Mr. Morss	250 00
For cash and sundries of Messrs. Olyphant & Co	400 00
For the doctor's bill against Mr. Millar	150 00
Making a total sum of	7,800 00

to be paid in full compensation for the losses and damages sustained.

This decision was communicated by the commodore to me, as vice-consul, with a request to call upon the Hong merchants for the sum named, and to pay the same over to the American merchant, Mr. Morss. The Hong merchants immediately paid the money, which was handed over to Mr. Morss, who gave a receipt therefor, expressing himself satisfied with the compensation granted for losses, but not satisfied with the injuries sustained to persons in the boat, and for the loss of the life of one of the number, a young man named Sherry.

Your excellency's explanations to Commodore Kearny, showing the whole misfortune to have been the result of mistakes, caused by the unexpected and actual hostile collision between the Chinese and British forces, were so clear and satisfactory to the commodore, that, while he could not but regret the loss of the life of one, and the injuries sustained by the others, he did not consider it proper to press claims beyond the amount named; and he considers the whole matter as definitely and conclusively settled.

I have the honor to be, sir, &c., &c., &c.,

W. DELANO, Jr.,
Vice-consul of the United States of America.

His Excellency KE,
Governor of the two Kwang Provinces, &c.

CNSULATE OF THE UNITED STATES OF AMERICA,
Canton, August 19, 1842.

SIR: I have to inform your excellency that Mr. Millar has addressed a letter to this consulate, in which he acknowledges himself fully and entirely satisfied and contented with the compensation made to him for losses, damages, and injuries sustained by him at the time of the

capture of the boat of the American ship Morrison, Captain Benson, in May of last year.

I have the honor to be, &c., &c., &c.,

W. DELANO, JR.,
Vice-consul of the United States of America.

His Excellency KE,
Governor of Kwangtung and Kwangse, &c., &c., &c.

No. 32.] UNITED STATES SHIP CONSTELLATION,
Hong Kong Bay, September 23, 1842.

SIR: I have the pleasure to inform you that peace is restored in China, and that a treaty is negotiated, of which the following articles subjoined are the most important provisions.

Major Malcolm, bearing the treaty, left Nanking seven days since, and proceeds immediately by the overland route for London, allowing me only a few moments to write.

I shall now despatch the Boston on other service, and she will sail on the 26th instant for the islands in the Pacific, to join me in April next at Valparaiso.

I have concluded to wait a short time with this ship that I may avail myself of the occasion to obtain some information of the disposition of the Chinese government towards the United States in this new state of affairs, their interests not being provided for in the treaty.

I hope it will meet with your approbation that I have divided the two ships, so as to embrace all the cruising ground, which otherwise, at this late period of my cruise, could not be done.

I shall lose no time in obtaining all the information in my power which may be had for the benefit of the commercial interest.

The route I design to take in this ship is by way of New Holland, New Zealand, and adjacent places, where American whalers resort, and then proceed by the Society islands to Valparaiso, leaving the places north of the line for the Boston, which vessel takes the northern and eastern passage from this.

I have directed Commander Long to visit the Marquesas islands, of which the French are now in possession.

In my last, my letter (No. 21) intimated the expediency of having an agent on this coast for the interests of the United States—one who is not connected with commerce; and that also some of our large class ships would be advantageous here to impress the Chinese with a sense of respect for the United States.

The state of affairs here now will of course receive due consideration on the part of the government, and I can only remark that, so far as I am informed and believe, the presence of a fleet of United States ships appearing here would do more to obtain a favorable treaty than any other measure; for unless the emperor and officers of the Chinese government are convinced of our power, they will not fail to be gov-

erned by that policy which the British, with established consulates in the empire, will be inclined to carry out in opposition to the interests and trade of the United States.

I despatch this letter by Warren Delano, jr., esq., late United States vice-consul at Canton, who goes by the overland route; and I have great pleasure in doing so, as his intimate acquaintance with the Chinese policy and knowledge of the Chinese and British affairs in the whole of their difficulties, will afford the government of the United States much valuable information.

It is said that Sir Henry Pottinger and the Chinese commissioners would be in this vicinity in a month or six weeks to adjust the details of the treaty; that four millions of dollars have been paid. In this case, I shall feel it my duty to remain for the above time.

I am, very respectfully, your obedient servant,

L. KEARNY,
Commanding U. S. Squadron, East Indies.

The Hon. the SECRETARY OF THE NAVY.

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1. Lasting peace and friendship between the two nations.
2. China to pay twenty-one millions of dollars in the course of the present and the three succeeding years.
3. The ports of Canton, Amoy, Foo chow-foo, Ningpoo, and Shanghae, to be thrown open to British merchants, consular officers to be appointed to reside at them, and regular and just tariffs of import and export (as well as inland transit,) duties to be established and published.
4. The island of Hong Kong to be ceded in perpetuity to her Britannic Majesty, her heirs, and successors.
5. All subjects of her Britannic Majesty, (whether natives of Europe or India,) who may be in confinement in any part of the Chinese empire, to be unconditionally released.
6. An act of full and entire amnesty to be published by the Emperor, under his imperial sign manual and seal, to all Chinese subjects, on account of their having held service or intercourse with or resided under the British government or its officers.
7. Correspondence to be conducted on terms of perfect equality amongst the officers of both governments.
8. On the Emperor's assent being received to this treaty, and the payment of the first six millions, her Britannic Majesty's forces to retire from Nanking and the grand canal, and the military post at Chinhae to be also withdrawn; but the islands of Chusan and Kolongsoo are to be held until the money payments and the arrangements for opening the ports be completed.

UNITED STATES SHIP CONSTELLATION,
Macao Roads, October 8, 1842.

The address of Commodore Kearny, commander-in-chief of a squadron of United States ships, respectfully represents that he learns with

deep interest the high imperial commissioners deputed to arrange commercial affairs with the British are expected in a short time to arrive at Canton, and that a commercial treaty is to be negotiated to operate in favor of "British merchants" exclusively.

The undersigned is desirous that the attention of the imperial government might be called with respect to the commercial interests of the United States, and he hopes the importance of their trade will receive consideration, and their citizens, in that matter, be placed upon the same footing as the merchants of the nation most favored.

The undersigned does not press this matter at present, but trusting to the good and friendly understanding which exists, he submits the case, and has the honor to be

Your excellency's most obedient servant,

L. KEARNY.

To the GOVERNOR OF CANTON, *&c.*, *&c.*

CANTON, *October* 15, 1842.

Ke, guardian of the young prince, member of the board of war, member of the imperial cabinet, and governor of the two Kwang provinces, states, in reply to the subject of the 10th of the 9th month, (October 13,) that I have received your polite communication relating to the English commerce. I, the governor, have ever hitherto treated the merchants of every nation with the same kindness. Moreover, the Americans who have come to Canton have had free commerce, month after month, and year after year. These merchants have been better satisfied with their trade than any other nation; and that they have been respectfully observant of the laws is what the august Emperor has clearly recognized, and I, the governor, also well know. How, then, should I not rather, on the cessation of difficulties with the English, wish to show favor to them? Now, I have ordered the Hong merchants, with the said English nation's merchants, to devise beforehand, and to wait the arrival, in Canton, of the imperial commissioners, great ministers of state. When I shall have received the newly devised regulations concerning the free trade of the English, then I, the governor, together with the lieutenant governor and Tartar general, will immediately deliberate upon the proper adjustment of the regulations, and will make a representation to the Emperor that he may hear and direct what shall be done.

Decidedly it shall not be permitted that the American merchants shall come to have merely a dry stick, (that is, their interests shall be attended to.) I, the governor, will not be otherwise disposed than to look up to the heart of the great Emperor in his compassionate regard towards men from afar, that Chinese and foreigners with faith and justice may be mutually united and forever enjoy reciprocal tranquillity, and that it be granted to each of the resident merchants to obtain profit, and to the people to enjoy life and peace, and universally to participate the blessings of great prosperity, striving to have the same mind. This is my reply.

The above is a faithful translation.

PETER PARKER.

To Commodore KEARNY, &c :

CANTON, *October* 19, 1842.

SIR: The war in China being at an end, and peace restored by a treaty concluded in favor of British merchants, by Sir Henry Pottinger, with the Chinese high commissioners, on the 29th of August last, induced me to address a note to the viceroy, requesting the attention of the imperial government to the importance of the American trade, and claiming for the citizens of the United States the same commercial privileges in China as may be granted to the nation most favored. I enclose you a copy of the governor's reply, which may be considered very favorable; and it is communicated for the information and satisfaction of those concerned.

Our commercial privileges in China, it would appear, are to be based upon those of the English, and subsequently thereto, so that some months will elapse before any further steps can be taken; and therefore it is proper I should proceed on my cruise, and I have to inform you of this intention. I hope to sail from Macao about the first of next month, of which the merchants may be informed who have communications for the west coast.

I will be obliged if you will, in the mean time, furnish me with all the political and commercial information which may be obtained calculated to promote the interests of the United States and their citizens.

Respectfully, your obedient servant,

L. KEARNY.

P. W. SNOW, Esq.,
United States Consul, Canton.

CANTON, *October* 20, 1842.

SIR: Your letter of yesterday, enclosing a copy of the governor's reply to your communication, I have had the honor to receive. This answer must be very satisfactory to you, and evinces a disposition on the part of this government to grant every reasonable call on them by a representation of our own, particularly when backed by a heavy man-of-war.

You notify me in your letter of your determination to leave this station on the first of next month. This I regret extremely to learn at this critical moment, when a new order of things is about to take place; when commercial regulations of the first importance to the interests of our merchants and to our nation are to be made, and the payment of debts due from the Cohong to American citizens is to be demanded, (for Sir Henry Pottinger has received the money for the English claims.)

The magnitude of our trade; the contemplated duties at home on imports from here, affording a very large revenue of far greater extent than the whole South American trade combined; the great increase of imports of native products of our own country, altogether leave not a doubt on my mind that it can never be the intention of our government to leave us entirely at the mercy of this.

You have been here long enough to know the prompt and immediate

action by this government on communications from the commanders of an American squadron.

It is my firm belief that your stay here until the middle of February next is of the utmost importance. The continuation of your cruise to the west coast of America, where there is always an ample number of ships of war, will be considered, I think, by our government, of minor importance compared with the unprotected state our trade would be in if you leave here at the time you name.

If your orders are not positive for your visit to the west coast, let us hope you will continue on this station until all the arrangements with this government and Sir Henry Pottinger shall have been completed; when I shall consider the war at an end, and not before.

I am, with great respect, your obedient servant,

P. W. SNOW,
United States Consul.

Commodore L KEARNY,
Commanding United States Squadron.

No. 35.] UNITED STATES SHIP CONSTELLATION,
Macao Roads, November 15, 1842.

SIR: I have the honor to acquaint the department with the present state of affairs in China, which have not differed materially from the condition represented in my despatch No. 32.

Since that period I have visited Hong Kong and Canton, and had the following correspondence, (copies subjoined,) which will afford the necessary information to account for my present delay on this coast.

I am persuaded there will be no difficulty thrown in the way of American interests by the Chinese; and I only yield to the urgent representations of the United States consul, and remain here to quiet the minds of the merchants, and with the hope that the good understanding which exists with the authorities at Canton may be extended to the imperial officers and government. I am happy to say such has been maintained in my intercourse with the authorities.

It is not improbable my stay at Canton during the negotiations on commercial affairs between them and the English, and the presence of this ship, will be useful. Should it become necessary to make demands in favor of equal rights and commercial privileges, it cannot fail to have a beneficial effect.

As the plenipotentiary and imperial commissioners are not expected from the north for a fortnight or three weeks, it affords me the opportunity of making my first visit to Manilla; and I have the honor to inform you that I sail to-morrow, and that the officers and crew enjoy uncommonly good health.

I regret to say that the sickness in the northern ports the past season has been so great as to deprive me of visiting them. The French frigate Erigone has just returned from the north with half her crew disabled from disease; and the loss of the British has been too great to allow a belief that they could have held out longer; and therefore the sudden conclusion of a treaty on their part was as acceptable to them

as it was to the Emperor, whose losses were much increased by hordes of native robbers, and his hopes of success lessened by fears of revolts and desertions, which seemed to keep pace with the successes of the enemy.

I have the honor to be, very respectfully, your obedient servant,

LAWRENCE KEARNY,
Commanding U. S. Squadron, East Indies.

Hon. the SECRETARY OF THE NAVY, *Washington.*

CANTON, *January* 5, 1843.

SIR: We beg to call to your official notice that our claims upon the Chinese government, for losses by the riot of the 7th ultimo, have been presented through the Hong merchants, but have not yet been replied to.

As a direct communication with the authorities might cause a speedy settlement, we have to request that you will communicate the above fact to Commodore Kearny, and beg of him to consider whether the presence of himself and his ship at Whampoa, and of himself at Canton, would not further these interests, which must depend upon him for protection.

Respectfully, your obedient servants,

AGUSTINE HEARD & CO.

EDWARD KING, Esq.,
American Consular Agent, Canton.

CANTON, *January* 5, 1843.

SIR: I beg to hand you the enclosed copy of a letter addressed to me by Messrs. Augustine Heard & Co. of this place, respecting their claims on the Chinese government for losses sustained by the riot which occurred here on the 7th ultimo. You will notice that they desire your protection and assistance, and I am inclined to believe that your interference would hasten the settlement of their claims.

I am, respectfully, your obedient servant,

EDWARD KING,
Consular Agent of the United States of America.

Com. LAWRENCE KEARNY,
United States ship Constellation, Macao Roads.

UNITED STATES SHIP CONSTELLATION,
Macao Roads, January 9, 1843.

GENTLEMEN: I have duly received your communications of the 5th instant, and have forwarded by this mail my reply to the several suggestions therein mentioned.

I have addressed the viceroy through the consulate, as a preparatory step, and Edward King, esq., will communicate the contents to you.

In the mean time I would suggest that you prepare a particular schedule of all the articles, and amount of cash, &c., and transmit it,

with what other documents you may think necessary, to me, in case the government do not settle the affair on the present footing.

Very respectfully, your obedient servant,

L. KEARNY,

Commanding United States Squadron, East Indies.

Messrs. AUGUSTINE HEARD & Co., *Canton.*

UNITED STATES SHIP CONSTELLATION,
Macao Roads, January 9, 1843.

SIR: I have received your several communications of the 5th instant, covering a copy of a letter from Messrs. Augustine Heard & Co. to you, stating that "their claims upon the Chinese government for losses by the riot of the 7th ultimo have been presented through the Hong merchants, but have not yet been replied to;" and "as a direct communication with the authorities might cause a speedy settlement," they have requested you to communicate the above facts to me, wishing me to consider "whether my presence at Canton, and this ship at Whampoa," would not further these interests.

In reply to this I have to state, that so far as such a step is to operate upon the provincial government by a show of force, it would seem unnecessary, with regard to the means, at least, of obtaining payment for losses incurred by unwarrantable acts of mobs, and reparation for injuries suffered by foreigners, or any citizens of the United States *in particular*, who cannot be obnoxious to a people they have never injured themselves.

After a careful and just estimate of the amount lost by the house aforesaid, and an application shall be transmitted to the viceroy, duly authenticated under the seal of the United States consulate, I am inclined to believe that full justice will be done, without an interference on my part.

Confident in the fairness of the claim, as well as in the high sense of honor, to say nothing of the friendly disposition, of the viceroy, I am willing to leave the subject in the present state, conveying my sentiments herein expressed through you to his excellency, with a request that you will communicate the same to him and to Messrs. Augustine Heard & Co.

The decision with which his excellency may be pleased to come can be communicated to me from his reply to you; and if my presence at Canton shall then be necessary to my fellow-citizens, in aiding them in any way, or my official action in this case shall be considered more satisfactory to the provincial government than the consulate's, I shall not hesitate to afford all my assistance, and comply with equal pleasure with your other suggestions, should you not receive a prompt reply to your address.

I am, very respectfully, your obedient servant,

L. KEARNY,

Commanding United States Squadron, East Indies.

EDWARD KING, Esq.,
United States Consular Agent, Canton.

CANTON, *January* 5, 1843.

DEAR SIR: We had the pleasure to-day to hear of your arrival at Macao, and you have doubtless heard of the attack upon a number of the foreign factories, of the destruction by fire of the English, Dutch, and Greek factories, and the plunder of such of them as were occupied, by a Chinese mob. We are among the sufferers, our house having been burned, with all the furniture, goods, &c., it contained; and, after the fire subsided, the treasury was forced, and about half the money, say nearly $230,000, belonging to us and our constituents, was taken off before we could procure aid to enable us to retake our premises. We have, many days since, made a statement of our losses, and sent it to the authorities, claiming reimbursement, but have received no reply of any sort. On the 1st instant one of our coolies was taken before the principal city mandarin, and has not yet been returned to us, but has been severely punished, it is said, for refusing to testify that the house was fired by accident. We have remonstrated against these proceedings, and the detention of our man, but get no reply.

I have thus briefly stated our case for your consideration, and would suggest that we think the presence of yourself and ship at Whampoa, and of yourself here, would have a most desirable effect in bringing the mandarins to a quick sense of justice.

I have the honor to be, with respect, your obedient servant,

AUGN. HEARD.

Commodore L. KEARNY.

MACAO, *January* 7, 1853.

SIR: I beg to hand you a letter which I received this morning from Augustine Heard, esq., an American gentleman residing at Canton, on the subject of an attack by a Chinese mob on his dwelling-house; which was burned, with its contents, and a large sum of dollars plundered. Mr. Heard thinks that your presence at Canton will tend to bring the mandarins to a sense of their duty in relation to the claims which he has on the government in this matter, in which opinion I fully coincide, though, of course, you will be governed therein as your own good judgment may dictate.

I have the honor to remain, sir, very respectfully, your obedient servant,

JAMES P. STURGIS,
Vice-consul of the United States of America.

LAWRENCE KEARNY, Esq.,
Commodore of the U. S. East India Squadron, Macao Roads.

UNITED STATES SHIP CONSTELLATION,
Macao Roads, January 14, 1843.

SIR: I have duly received your letter of the 7th instant, covering a communication from Augustine Heard, esq., an American citizen, on the subject of his losses by the mob at Canton.

I send you, herewith, copies of my letters on that subject, and I am prepared to act further, as circumstances may require.

In handing you the enclosed for your information, I shall be glad to hear from you with regard to any measures or advice you may think proper to suggest, both with respect to this affair or any other matters, for the better interests of the United States or their citizens in China.

Very respectfully, your obedient servant,

L. KEARNY.

JAS. P. STURGIS, Esq.,
United States Vice-consul, Macao.

P. S.—I have just understood that the imperial commissioners have arrived at Canton; and, as the details of the treaty are to be made out and new regulations for trade will be entered upon in favor of British merchants, I beg leave to suggest the propriety of the American merchants submitting their views as to what relates to themselves, upon which a representation could be made for the benefit of the interests of the United States.

CONSULATE OF THE UNITED STATES OF AMERICA,
China, Macao, January 15, 1843.

SIR: I have the honor to acknowledge the receipt of your communication of the 14th instant, covering copies of your replies to letters received by you from the consulate at Canton, and from Messrs. Augustine Heard & Co., of that city, on the subject of a claim made, or to be made on the Canton government for depredations committed on the premises of those gentlemen by a Chinese mob, which attacked and burned their dwelling-house and contents, and plundered them of a very large amount of dollars. As Mr. Heard has communicated with me on the subject, asking your interference and influence to be brought into action for the purpose of obtaining that reparation which is unquestionably due from the local authorities (but for whose supineness these outrages could not have been committed) for these most gross attacks on the citizens of a government always friendly to China, I would, as before written, suggest that you should, as soon as circumstances admit, proceed in your frigate as far as second bar in Canton river; and, after awaiting there a reasonable time, the resu't of an application which will be speedily made, through the consulate, to the viceroy of Canton, on the subject of indemnification and reparation to the parties aggrieved, then proceed to Canton where your presence must, in my opinion, elicit a speedy and favorable termination to the matter in question.

As regards matters connected with the trade of our country and China, they are generally favorable, though in some particulars the American merchants have just cause of complaint against the Canton authorities, in common with traders of other countries. These affairs will, I presume, be fully discussed between the imperial delegate and Sir Henry Pottinger, at their contemplated interview, and arranged

in a manner satisfactory to the British merchants in China and those connected with Chinese affairs; and as the United States are fully and fairly entitled to all the privileges which this government may cede to other foreign flags, I would suggest that a meeting of the American merchants at Canton be called, for the purpose of considering and representing to you, through the consulate, their ideas and views on the subject of our trade and intercourse generally with the Chinese, to be by you submitted to the imperial commissioner. Our position in China is merely one of traders; and consequently we can ask for nothing more than is requisite for the conducting of our intercourse on a footing that may secure to both Chinese and ourselves the means of conducting our trade in a mode that may be satisfactory and honorable to both parties.

I have the honor to remain, sir, your most obedient servant,

JAMES P. STURGIS,
Vice-consul of the United States in China.

L. KEARNY, Esq.,
Commodore of the United States East India Squadron.

CANTON, *January* 25, 1843.

DEAR SIR: I have your favor of Monday, and write a line to say that I have not received any answer from the governor in reply to my communication. If he intended to dispute the claim, I should probably have heard from him before this time. I send in another letter today, informing his excellency that no reply had reached me, and calling the settlement of the claim to his early attention.

I expect the Hong merchants will be forced to pay the claim, from what I hear from them.

I hope to hear of your being at Whampoa, as it may be necessary for you to interfere in this business after all.

Yours, truly,

EDWARD KING.

Commodore L. KEARNY.

CANTON, *January* 16, 1843.

The American consular agent, King, has been requested by his countryman, Mr. Heard, to lay before his excellency the enclosed statement of losses, amounting to $253,430 50, sustained in consequence of the plunder and burning of his factory (No. 1, Dutch) by the Chinese mob on the 7th December, and to ask for payment. The said statement having been sworn to, he forwards it accordingly, and respectfully requests that Mr. Heard's losses may be made good to him.

Of the fairness of the claim now presented the undersigned and his nation s commodore, Kearny, are fully persuaded; and they cannot doubt that his excellency, who must be aware of all the circumstances,

will view the subject in the same light, and order an early settlement thereof.

EDWARD KING,
Consular Agent of the United States of America.

To his Excellency the GOVERNOR OF CANTON, *&c., &c.*

No. 38] UNITED STATES SHIP CONSTELLATION,
Macao Roads, January 16, 1843.

SIR: I have the honor to acquaint you with my proceedings since my last communication (No. 37) from Manilla, and to inform you of the principal events since that date.

I sailed from Manilla on the 25th ultimo, and arrived on the 1st instant at Macao. On the 7th instant I received a communication from James P. Sturgis, esq., United States vice-consul, covering a letter from an American merchant at Canton, of the firm of Augustine Heard & Co.; and likewise a communication on the same subject from Edward King, esq., United States commercial agent, relating to a riot in that city, stating the loss of a large amount of dollars, and the burning of the dwelling and contents of said firm, and that no reply had been received to their application for remuneration for the heavy losses sustained by the event.

Under the impression myself that the mob arose out of other causes than an unfriendly disposition towards Americans, and that the authorities will be disposed to make full reparation for the losses, I have deemed it best to reply to the communication before mentioned, in a letter to the consulate, and requesting that another address may be sent to the viceroy on the subject, and my sentiments conveyed to him therein.

I have heard nothing further, and therefore apprehend the Hong merchants have withheld the communications from the governor, they being aware of the nature of them, and knowing they will be called upon to make good the amount of damages, as is usual in all cases relating to demands made by foreigners.

I have, therefore, deemed it my duty to proceed to the river, and send in an address, by an officer of this ship, to the governor, who will, it is believed, cause reparation to be made; which, when done, the copies of the correspondence will be forwarded to the department.

I shall avail of this occasion to renew my attempt to secure the commercial interests of the United States, now that the important business of making out the details of the treaty, and devising new regulations for "British merchants," is pending.

Political affairs in China have been in the same posture since September last, and I availed of the occasion to visit Manilla, for the purposes referred to in former letters. I have to state, however, that while the present anti-English feeling exists so generally with the Chinese, there can be little dependence upon a treaty, or the laws, to preserve order; and hence the long continuance of a peace may be considered a matter of uncertainty.

The Emperor has invested the head commissioner, Elepos, who

arrived at Canton on the 10th inst., with powers to arrange affairs with the British plenipotentiary; and unless a special provision for other than British vessels to enter the five ports is made, which it is not probable would be voluntarily inserted, the trade of the United States would be subject to being cut off, until a treaty could be entered into. I beg leave to state, in connexion with this matter, that the schooner Mazeppa is now in the north, with a cargo of American cotton goods, where it appears the mandarins are now under the impression that *English vessels* only were to be allowed to enter and trade.

I do not understand that any provisions are to be made for any other flag, as, in a casual conversation with Admiral Sir Thomas Cochrane, I understood him to say, "other nations must look out for themselves;" and, therefore, conceiving an early attention to this matter would meet your approbation, I immediately addressed the governor of Canton in behalf of the United States, and herewith transmit a duplicate copy of that correspondence.

I have the honor to be, very respectfully, your obedient servant,

L. KEARNY,

Commanding the U. S. Squadron in the East Indies.

The Hon. the SECRETARY OF THE NAVY,

Washington.

Yih, the Quang-chow-foo, proclaims to Honqua and the other Hong merchants, for their full information, that he has received an official communication from his excellency the Governor General Ke Kung, stating that "he had receized the petition of King, consular agent of the U. S. A., which declares that, upon the 7th December, the foreign barbarian Heard, who resided in the Dutch Hong, sustained losses in specie and merchandise, by the burning and plundering his house by the mob, to amount of $253,430 50. It was on the 12th January, 1843, he petitioned, requesting his excellency the governor general to issue his orders for the settling of this loss; but not having received any answer, and the merchants from afar, the barbarians Heard & Co., being urgent for an early settlement, he therefore respectfully petitions again, and begged his excellency at an early day to examine and give orders that it be done, and sincerely superlative will be his great virtue, &c., &c.

"Before these came, I had examined and repeatedly issued my orders, and commanded the Quang-chow-foo to transmit my edict to the Hong merchants, that they, with the barbarian merchants, should investigate and properly settle this business. Now, of different nations, barbarian merchants have in two instances petitioned me, and all their losses are $43,552. But more than twenty of the plunderers have been seized, who testify the losses were not over several ten thousands, and certa nly not $250,000. The said consul's account is manifestly excessive. The night the barbarian's residence took fire, a multitude of eyes saw all things that were lost, (and know the amount could not be so immense.) Furthermore, this affair occurred in the thirteen foreign factories; still more, therefore, cannot the Hong mer-

chants shuffle, and say they do not know the state of the case. The conclusion is, that whatever may be the true amount of losses, and what is right to be done, the Hong merchants alone are to be questioned. I have accordingly issued my orders to the Quang-chow-foo, agreeably to my repeated injunctions, to settle this affair, to command the Hong merchants, Honqua and others, with certainty and truth to make a clear examination, and speedily make a proper settlement."

"Hitherto it has been the duty of these merchants to settle all concerns relating to foreigners; and now, the present affair occurring in the thirteen factories, they can by no means deny their responsibility. If they can settle it immediately, they may still have some semblance of zeal for the public good. If they again follow their own idea, putting it off, only causing delay, putting their hands in their sleeves as though they had nothing to do with it, so that the foreigners perpetually trouble me with their complaints, the said Hong merchants cannot escape the due punishment of their offence. Let the Quang-chow-foo tremblingly and truly hasten and order the Hong merchants to take the circumstances of the case, and manage it, first transmitting my edict to the said consul, King, for his information."

"Let there be no opposition," &c.

Having received this command, I have ordered the Namhaehéén to act accordingly, and to convey the edict to the said Hong merchants, that they, in obedience to my repeated injunctions to settle the affair immediately, with certainty and truth make a clear investigation, and properly manage the concern.

Tremblingly and truly hasten and take the circumstances, and investigate and manage the business, first transmitting the edict to the said consul, King, for his information.

Let there be no opposition.

A special edict.

TAOU KWANG, 23*d year*, 1 *moon*, 3 *day*, (*February* 3, 1843.)

True translation. PETER PARKER.

Literal translation of Commodore Kearny's despatch, in Chinese, to the Governor General, Ke.

The American nation's man-of-war, Captain and Admiral Kearny, having arrived at Whampoa, communicates with his equal his excellency the governor general of the two Kwang.

Touching the affair of Taou Kwang the twenty-second year, the eleventh month, and the seventh day, the outrage of the burning of factories, and plundering my American nation's merchants of merchandize and foreign money, I am happy to know that your excellency, the governor general, is informed; and I, the admiral, also know that your excellency has issued his proclamation to repay my American nation's men their lost treasure. Now I, the admiral, have ascertained that as yet my American nation's men's losses have not yet been paid, because the Hong merchants state, saying that they them-

selves are unable to collect so much money. I, the admiral, request that your excellency will look to this affair, as three months have already passed, and four more are required before the losses shall be repaid.

My nation's merchants who have sustained these losses, *these men*, state that the Hong merchants wish to give bonds in four months to settle the account; but this arrangement my nation's merchants do not like, and reject it.

I, the admiral, will not determine what is right to be done, but leave it with your excellency to order what is right and just, in order that your excellency's proclamation of the second month and third day to the Hong merchants may be obeyed; *i. e.* the proclamation in answer to the respectful petition of my nation's vice-consul, King, dated Taou Kwang, the twenty-second year, twelfth month, and the sixteenth day.

It is on account of this business that this communication is made.

The foregoing communication is made to the guardian of the young prince, member of the board of war, member of the imperial cabinet, and governor general of the two Kwang provinces, Ke.

On board the man-of-war named Constellation, now anchored at Whampoa, Taou Kwang, the twenty-third year and the second month.

MARCH 15, 1843.

Reply of the Governor General of Canton and Kwangse to a communication of Commodore Kearny, of March 15, 1843.

To the honorable the American Commodore:

Ke, the governor general of Kwangtung and Kwangse, member of the imperial cabinet and board of war, and guardian of the young prince, makes this reply to the communication he has received, and which he fully understands.

According to the established laws of the celestial dynasty, whenever, among the people, any sustain losses by theft, it is absolutely requisite to seize the offender, and persevere to the utmost that the original goods that have been stolen may be restored. In the present case, the property lost and stolen should, in justice, as it is found among the offenders with the (owner's) name upon it, be seized and delivered up; but since the amount is exceedingly great, it cannot at this time be taken and restored. Therefore, the governor has issued this proclamation, ordering the Hong merchants positively to arrange, (for the emergency,) for the governor compassionates the wishes of men from afar. But now the Hong merchants, in settling this affair, instead of paying back the identical property plundered, have fixed upon a plan, viz: they have sent up their petition stating that, being unable at this time to meet the demand, they have taken care to settle it positively; that within the month of July next they will pay the lossess. But your honor, the commodore, has communicated that "your countrymen dislike this arrangement," &c. Previously to

the receipt of this communication, the governor had ascertained that the sum due for merchandize and treasure was not small. Now it devolves on the Hong merchants, as is right, to pay off all the debts, (due to different foreigners,) and these are exceedingly great. That it is difficult at this time to pay all alike, as stated in their petition, is really true. What the commodore has communicated—that his countrymen cannot wait a long time for their pay—is self-evident, and according to the principle of human reason; and the governor has now ordered the Hong merchants strenuously to endeavor positively so to manage as to settle one month earlier, (than they propose,) that within the period of June next the debt be paid without fail.

On a former occasion, the governor received your honor the commodore's communication, requesting him, in his behalf, to "solicit the favor of the august Emperor to allow the merchants of his honorable nation to trade upon the same terms as those granted to the merchants of other nations," &c. As in duty bound, the governor having already addressed the Emperor clearly upon the subject, waited the coming of the high commissioners at Canton, where they were in concert to attend to the foreign relations; but the Tartar general, Eleepie, having arrived at this city, but a short time elapsed, when, most unfortunately, on account of disease, he "went out of office," (*i. e.* deceased)—so that whatever may be just and equal in the trade of each nation, remains unsettled. It is therefore necessary to wait the arrival of his successor; and when some plan is adopted, then a personal interview may be held with your honor, the commodore, and, face to face, the relations between the two countries may be arranged, and the same be reported to the Emperor. This is the reply.

TAOU KWANG, 29*d year*, 2*d moon*, 17*th day*, (*March* 17, *A. D.* 1843.)

A true translation.

PETER PARKER.

MACAO ROADS, *April* 13, 1843.

Kearny, commodore of the American ships of war, and directing his country's affairs in China, hereby explains, and respectfully informs your excellency more particularly regarding your excellency's former communication, in which were some expressions respecting the trade and unsettled business between the two countries.

The commondore is led to believe that your excellency has misapprehended the meaning of his communication of last October; and in your excellency's communication of the 17th ultimo, which the commodore has received, and which he has carefully read, he concludes that your excellency supposes him to have received extensive powers from his own government—able to manage the weightiest affairs, and qualified to settle a treaty with the imperial commissioner, which, after being ratified by his imperial majesty, shall become a permanent treaty between our two countries. I, the commodore, perceiving your excellency cherishing this good feeling, have already respectfully memorialized my sovereign fully regarding it. If, however, his imperial

majesty wil declare his will on this point, my country will no doubt rejoin to it in the same spirit of amity, and straight return an answer, and send a high officer to China, who, in connexion with the imperial commissioner, will deliberate and settle a permanent treaty of lasting peace and friendship. But to commence this good thing, to open this road of mutual benefit, belongs to his imperial majesty of China; for, to take that which will highly benefit another country, and beg that country's favor to permit, is rather demeaning one's self and honoring another. America is a highly prosperous and great country, and needs to ask no favors of another country.

Regarding his communication of last October, the commodore requested your excellency to imform his imperial majesty that his countrymen at present living in China ought to be treated with kindness, and their rights regarded as they properly ought to be. If your excellency, on reading these words, inferred that the commodore was begging a favor from China, then your excellency was undoubtedly mistaken; for no such thing was meant. Moreover, his own country would not allow him to do any act derogatory to the high honor of either country. It is, rather, the desire of the commodore always to obey his own country's high commands; and in any case to advise as to the means of attaining national benefits, does not appertain to him. But if he can be the means, although for a short time, of procuring these great benefits for the trade of his country, it will afford him the highest pleasure. If the governments of America and China fully know the imperial will, all difficulty will in future be prevented; for the laws of his country forbid all interference in the internal policy of other countries; and, therefore China need have no apprehension of subsequent difficulties arising. But there are persons in all countries, who, grasping for gain, and to benefit themselves alone never regard the national honor; they who scheme for profit, and in all ways transgress laws, trampling down all obstacles in their path are of this sort; those, too, who by opium (gaining great profits) are getting their living, it is well known belong to the same class. The commodore has no other object besides maintaining peace and quietness for his countrymen trading here legally; and if others are seized by the imperial cruisers in the acts of smuggling opium into China, then let them be judged and sentenced according to the laws

Your excellency's kind expression in a former communication has been received with gratitude—"that his countrymen have been observant of the laws—contented more than any other nation's merchants, with their trade." The commodore has sincere pleasure in respectfully reporting this testimony to his sovereign.

What course may be pursued in future, and how long the peace and trade can be maintained, rests with the Emperor; and, also, whether his countrymen can trade here on the same terms with the merchants of other countries, is a very weighty matter, and he requests your excellency to examine; for, if it cannot be equally permitted, it will cause much unfriendly feeling in his own country.

The commodore also avails of this communication again to say, that what his imperial majesty grants to the traders from other countries, his own sovereign will demand for his merchants. And to prevent any

subsequent difficulties, your excellency will readily perceive, that, in order to negotiate a permanent treaty between the two countries, and settle the terms of amity and friendship, the sovereigns of both countries ought to appoint high officers to negotiate thereon, and settle the terms of a lasting treaty, which would be a great benefit.

Your excellency's former communication has been received, in which the time of the Hong merchants to pay the losses of his countrymen was fixed in the second decade of the 4th month. His countrymen, regarding this time as very long, have repeatedly sent to me requesting that the high officers would order the Hong merchants to pay these losses immediately, according to the accounts already rendered. The commodore knows that your excellency will not allow this trifling matter of trade to be the cause of future embarrassment; and he therefore requests your excellency at once to order the Hong merchants to pay it. Besides settling the matter of these losses the commodore has no further business; and thus to be delayed by your excellency, he cannot regard with pleasant feelings. His countrymen's property was plundered by a mob; and because the high officers thus delay to repay their losses, the commodore has already remained in Canton three months alone. He cannot, therefore, again bring this business before your excellency, but must respectfully memorialize his own sovereign regarding the whole matter from beginning to end.

The commodore has now no other business in China, and only awaits your excellency's reply to return home.

With sentiments of high consideration, &c., &c.

To his Excellency Ke,
Governor General of Kwangtung and Kwangse.

Ke Kung, minor guardian of the heir apparent, President of the Board of War, and Governor General of the provinces of Kwangtung and Kwangse, hereby returns an answer:

I have received your communication, with which I have made myself fully acquainted. The various particulars relating to the commercial duties to be paid by each country are all to be regulated uniformly by one rule, without the least partiality manifested towards any one. As to what duties are to be increased, and what diminished, or what perquisites are to be retained, and what done away with, are, as your excellency no doubt already knows, at present matters of public and equitable negotiation with the English. We are waiting the arrival of the imperial commissioner to conclude the negotiations; and after they have been laid before his majesty and approved, they will then pass into force in a uniform manner for every country. They will not enable the English alone to derive advantage therefrom, while other countries are still restricted in their trade.

His imperial majesty's commands have already been received, permitting the English to carry on trade at the newly opened ports of Fuchan-foo, Ningpoo, and Shanghai; but whether other countries will be in the same manner allowed to trade there, I, the governor,

cannot presume here to decide upon. It will be necessary to await the arrival of the imperial commissioner, who will lay all the circumstances before his majesty, and request instructions how to act.

Respecting the matter of a treaty, upon which you remark, it is well known that your honorable country is amicable and well disposed in the highest degree; but, during the two hundred years of intercourse between China and other countries, there has never been an interchange of treaties. Recently, indeed, because we and the English have been in collision for successive years, and the two parties mutually distrusted each other, a treaty of peace was mutually drawn up, in order to remove all suspicion and jealousy. This arose solely because harmony did not exist. But if our two countries carry on the trade as usual, there will, of course, be peace between us, and no formal compact will be necessary in addition. It would be an unnecessary and circuitous act. I beg your excellency to consider upon this matter, (and see if it be not so.)

Respecting the remuneration to American merchants for their property lost, I have transmitted urgent orders to the Hong merchants to have it ready for delivery at the time appointed, in the fourth month, according to the amount agreed on. That time will speedily be here, nor shall the matter be delayed any longer than that time.

To his Excellency the AMERICAN COMMANDER.

CANTON, TAOU KWANG, 23*d year*, 3*d moon*, 17*th day*, (*April* 16, 1843.)

True translation.

S. W. WILLIAMS.

UNITED STATES SHIP CONSTELLATION,
At anchor in the Bogue, April 19, 1843.

SIR: You will oblige me if you will give me the names of the American vessels which have arrived from the United States, and which remain on this coast since the year 1840. Also, what vessels have discharged their crews in consequence of any alleged sale of aforesaid vessels; and what vessels under the American flag are to be recognized as lawful traders on this coast—by which I do not intend to include those in the regular tea trade.

I have sent a boat down with a letter from the governor to be translated; and, as much depends upon its contents, I request an early reply, that I may understand how to act in case I fall in with any more opium smugglers.

I am, very respectfully, your obedient servant,

LAWRENCE KEARNY,
Commanding the United States East India Squadron.

JAMES P. STURGIS, Esq.,
Vice-consul of the United States in China.

CONSULATE OF THE UNITED STATES OF AMERICA IN CHINA,
Macao, April 20, 1843.

SIR: In reply to your letter of yesterday's date, I beg to inform you that the following specified vessels are such as have arrived in China in 1841 and 1842 and 1843, and are now in this country, (in part,) though the absent are expected to return, viz:

Schooner Anglona—sold to the English; now in the opium trade under British passport; crew discharged; register sent home.

Schooner Princess—sold to the English; now on a voyage to Bombay; crew discharged and register kept in this office. She is now called the Petrel, and sails under British pass.

Schooner Ariel—sold to Mr. George W. Frazer, an American, and commanded by a Mr. Shannon, of the United States navy, as he says. This vessel is in the opium trade, and really owned by an Englishman. Crew discharged and register kept.

Schooner Mazeppa—sold to the same, and commanded by him; situated the same as the Ariel; register detained by me.

Schooner Gazelle—American, from Boston; engaged in the opium trade under charge of an English house.

Schooner Zephyr—American, T. M. Johnson, master, now on a voyage to Bombay; crew discharged here. She is coming back to China.

Brig Sarah Abigail—sold by the master, Isaac S. Doane; crew discharged and register sent home. She is American owned.

Barque (or ship) Lark, Captain Tibbits; waiting for employment.

Ship America—condemned and sold to the English; now bought by Americans, and called the New Lintin. She is a store ship.

Ship Lema—Captain William Poor; bought from the English by Americans; is now at Whampoa, but how employed I am not aware.

I have the honor to remain, sir, with much respect, your very obedient servant,

JAMES P. STURGIS,
Vice-consul of the United States of America.

Commodore L. KEARNY,
Commanding United States East India Squadron.

To American merchants and others.

All persons having goods, merchandize, or treasure to ship from one port to another on this coast, are hereby cautioned against intrusting the same on board any vessel in the "opium trade," sailing under the flag of the United States of North America.

Dated on board the United States frigate Constellation, harbor of Amoy, coast of China, this 18th day of May, A. D. 1843.

LAWRENCE KEARNY,
Com'g the United States Squadron in the East Indies.

UNITED STATES SHIP CONSTELLATION,
Macao Roads, April 21, 1843.

SIR: Herewith you will receive a copy of the governor's reply to my last communication, which is respectfully referred to as the result of my late visit to the river; and as far as the same may be considered a matter of interest to yourself and our country, it can be used.

I also send you the original despatch from the governor on a former occasion, upon the same subject, a translated copy of which you now have.

The case of Messrs. Heard & Co., with these documents in support of their claim, is now left in your hands; of which I beg you to acquaint them. Regretting myself that it has not been finally settled, I cannot now doubt its being paid at maturity of the order from his excellency.

The aspect of affairs, as seen by your referring to the governor's words respecting our trade, looks as favorable as can be expected, and I shall rest satisfied with having called his attention to the matter, and transmit the case for the information of our government.

I am, respectfully, your obedient servant,
LAWRENCE KEARNY.

JAMES P. STURGIS, Esq.,
Vice-consul of the United States at Macao.

No. 46.] UNITED STATES SHIP CONSTELLATION,
Amoy Harbor, China, May 19, 1843.

SIR: I have to acquaint you that since my leaving Manilla, on the 7th instant, no new case of cholera has occurred on board. The officers and crew are now in good health.

The subjoined list contains the names of those taken and deceased.

In proceeding north, a great change in the temperature—from extreme heat to moderate cool weather—has had the beneficial effect to remove the cause of the malady.

The water procured at Manilla, I am sorry to say, proved impure; and in order to change the stock before going into the Pacific, I have touched at this place. I attribute the general good health, in a great measure, during the cruise, to the plentiful supply of good wholesome water and provisions.

I have also to inform you that the American schooner Ariel, a notorious opium smuggler, has just disposed of a cargo of that article in this vicinity. She is one of the vessels referred to in my last despatch. She sails under the American flag, without other authority than a bill of sale to one George W. Frazer, an American citizen, who, without any sort of means whatever, now appears as the owner of very valuable American schooners on this coast in the opium trade. I have ample proof that he does not belong to any mercantile firm whatever, and that he has not been in the United States, nor out of this country, for six or eight years. The American schooner Mazeppa and others were expected here momentarily, but I believe have changed their destination, on information of the seizure of the Ariel being sent out by their agents. This same adventurer, Frazer, is owner and master of the Mazeppa.

The schooner Ariel has now on board a valuable cargo for English opium traders in Macoa—from one hundred and thirty to one hundred and fifty thousand dollars in Sycee silver alone, and the remainder in camphor—being the return cargo for opium.

The American flag is now the only cover for this illicit trade, Sir Henry Pottinger having issued a proclamation against it; and the English craft having been turned away from the rivers, has placed the Americans in a peculiarly advantageous position as freighters under the flag of the United States.

The British officers have informed me here that their subjects defy them by pointing to the American flag over that contraband article; but I am in hopes that this desecration will receive some salutary lessons before I leave, in case I fall in with any more vessels of this kind.

With regard to the Ariel, I have taken her papers and colors from her; and I have obliged her master to discharge the whole of her cargo here, and then he is to return to Macao. Her papers are endorsed by me in a manner which will render them unavailable, and are returned sealed to the consulate. Were it not for the risk, I would send her to the United States; but she capsized once or twice in Boston harbor before she sailed, and is now a dangerous vessel. Should I fall in with any sea-worthy vessels of her character, I shall send them home, that their case may be properly decided by the laws, of which the owners, as well as the consular establishment of the United States, seem to have been clearly regardless in making transfers that are illegal. These sham sales are well known, by which our national character is daily loosing ground, and will so continue while the public consular duties are confided to merchants whose interests are so deeply involved in the transactions before cited.

The subjoined copy of a public notice on this occasion is respectfully presented for your information. The subject has been brought to the knowledge of the imperial officers by a translation of the same into the Chinese language.

I have the honor to be, very respectfully, your obedient servant,

L. KEARNY.

The Hon. the SECRETARY OF THE NAVY.

UNITED STATES SHIP CONSTELLATION,
Under way, entrance Amoy Harbor, May 21, 1843.

SIR: I enclose, herewith, extracts from the log-book of the schooner "Ariel," and also an extract from the United States laws on navigation. The grounds for taking the Ariel are based on these papers, and of course the "Mazeppa" will be liable to the same seizure in case I should fall in with her.

I am, very respectfully, your obedient servant,

L. KEARNY.

JAMES P. STURGIS, Esq.,
United States Vice-consul, Macao.

Extract from the United States Laws on Navigation, Article 1362.

"But no such vessel shall be entitled to registry, or, if registered, to the benefits thereof, if owned, in whole or in part, by any citizen usually residing in a foreign country, during such residence, unless he be a consul of the United States, or an agent for, and a partner in, some house of trade, or copartnership, consisting of citizens of, and actually carrying on trade within, the United States."*

UNITED STATES COMMERCIAL AGENCY,
Oahu, Sandwich Islands, July 7, 1843.

SIR: I have the honor to inform you that on the 25th of February last, a provisional cession of the Sandwich Islands was made by his majesty Kamehameha III to Captain Lord George Paulet, of H. B. M. ship Carysfort.

The immediate cause of this act will be found in the correspondence which took place between the parties, herewith enclosed, and to which I would respectfully call your attention.

I also enclose to you a copy of a message which the President of the United States sent to the House of Representatives on the 30th of December last, relative to the Sandwich Islands, and the report of the Committee on Foreign Affairs relative to the same.

That the government of the United States will adopt any extraordinary measures to secure to his majesty Kamehameha III the exclusive sovereignty of these islands—a sovereignty which has most unjustly been taken from him—is a question upon which you can form an opinion after perusing the documents above referred to.

I avail myself of this opportunity to communicate to you that intelligence has been received at this office of the death of Commodore Isaac Hull, one of the brightest ornaments of the United States navy. To one who has served his country so long, so ably, and so faithfully, every honor which his country can offer to his memory is due. It is hardly necessary for me to express a wish that the customary measures, expressive of the loss which our country has sustained, be adopted by you on receipt of this intelligence.

With sentiments of regard, I have the honor to be your most obedient, humble servant,

WM. HOOPER,
Acting United States Commercial Agent.

Com. LAWRENCE KEARNY,
United States Frigate Constellation, Oahu.

UNITED STATES SHIP CONSTELLATION,
Honolula, Oahu, July 10, 1843.

SIR: Your letter of the 7th instant, with the accompanying documents, duly received, informs me that a provisional cession of the

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Act 31st December, 1792, sec. 2.

Sandwich Islands was made by his Majesty Kamehameha III to Captain Lord George Paulet, of H. B. M. ship Carysfort, and that "the immediate cause of the act will be found in the correspondence which took place between the parties."

His Majesty Kamehameha III, ceding to any power whatever the independence of his Islands, and, without resisting, surrendering an undisputed right and sovereignty, is calculated to invite the attention of the government of the United States, and the United States and their citizens would seem to claim a large share of consideration in this matter. Therefore, on behalf of the same, I beg you to publish the enclosed copy of a protest, with this letter.

With regard to "*the correspondence*," I request to be informed what preliminary measures were taken by the commander of H. B. M. ship Carysfort for the safety of the lives and property of American citizens residing at Oahu, previous to 4 o'clock p. m. of Saturday, the 18th of February last; and, if any, what time the announcement of his intention to attack the town at that time with said ship was received, and whether any protest on the occasion was made, or remonstrance against that precipitate course.

It appears to me that when an act is to be attempted, regardless of the rights of others, especially a case involving great and certain distress, by letting loose the bonds of government, it becomes a duty to restrain it to a reasonable time by force, to the extent of that force, be it ever so small.

While the United States government refrains from entangling alliances with other nations, and grasps at no power or territory abroad, it would seem but reasonable that, having no portion of the spoils at the cutting up of the world, it should allow no infringement upon the rights of its citizens.

I am, very respectfully, your obedient servant,

LAWRENCE KEARNY,
Commanding United States East India squadron.

WILLIAM HOOPER, Esq.,
United States Commercial Agent, Oahu.

UNITED STATES COMMERCIAL AGENCY,
Oahu, Sandwich Islands, July 11, 1843.

SIR: I have the honor to acknowledge the receipt of your communication of yesterday's date, in which you request to be informed "what preliminary measures were taken by the commander of H. B. M. ship Carysfort for the safety of the lives and property of American citizens residing at Oahu, previous to 4 o'clock p. m. of Saturday, the 18th of February last, and, if any, what time the announcement of his intention to attack the town at that time with said ship was received, and whether any protest on the occasion was made, or remonstrance against that precipitate course."

The undersigned would observe, in reply, that no preliminary steps whatever were taken by the commander of H. B. M. ship Carysfort for the safety of the lives and property of American citizens resident at

Oahu, other than that of informing Captain Long of the United States ship Boston, between the hours of 11 and 12 o'clock, on the night of the 17th of February, of the hostile measures which he intended to pursue against the Sandwich Islands government on the following day. Captain Long immediately handed to me, in person, the communication which he had received from the commander of the "Carysfort," a copy of which was embodied in a public notice issued by me early on the morning of the 18th, tendering to the American residents the ship Boston as an asylum for their families and property.

At about 11 o'clock of the morning of the 18th, Mr. Simpson, acting H. B. M. consul, addressed me a note, stating that unless certain demands made by Captain Paulet upon the king of these islands were not complied with at or before 4 o'clock p. m. of that day, "he will at that hour commence hostilities against this government." On receipt of this note I immediately repaired to the council of chiefs, then assembled to deliberate on the course to be pursued under existing circumstances, and requested his Majesty the king to state distinctly whether the nature of the "demands" was such as would forbid the possibility of his acceding to them. He replied that, so far as the native population were interested, they had but little to lose in any attack which might be made on the town, and he had a mind not to accede to "demands" so unjust and oppressive; but, in consideration of the affection (*aloha*) he bore for the many Americans resident in the town, and in consideration of the great amount of property they had at stake, he should probably accede to the "demands," under protest.

Official information of the same having been communicated to me by his excellency the governor of the island, I gave due notice thereof, and the public mind, then under great excitement, became in a measure quieted.

I am not aware that any protest or remonstrance was made by Captain Long against the precipitate course declared by Captain Paulet.

From this office he could have received none, from the fact of his having refused to acknowledge me, as well as the consul of France, as the representatives of our respective governments.

The undersigned, considering the occupation of these islands by any other power than that of the native government to be an affair of grave importance to the government of the United States, availed himself of the earliest opportunity to forward to the Secretary of State, by a special messenger, a full statement of the transactions of Captain Paulet, and of the provisional cession of the islands to Great Britain.

I shall avail myself of another opportunity to transmit to you a statement of some of the grievances to which the citizens of the United States resident here have been subjected since the assumption of the government of the islands by Captain Lord George Paulet.

With every sentiment of respect, I have the honor to be your most obedient, humble servant,

WM. HOOPER,
Acting U. S. Commercial Agent.

Commodore LAWRENCE KEARNY,
Commanding U. S. East India squadron, off Honolulu.

U. S. FLAG SHIP CONSTELLATION,
Off Honolulu, Oahu, July 11, 1843.

SIR: I have the honor to transmit for your information a copy of my communication to his Majesty Kamehameha III.

The discussion of the subject of the loss of the independence of these islands of Hawaiia, and of a forced change in their municipal regulations, to the detriment of the interests of the citizens of the United States of America, may perhaps more appropriately belong to our respective governments. I shall therefore withhold all further comment upon questions so grave and important.

Recording this protest, (enclosed,) for the purposes therein expressed, I remain, very respectfully, your most obedient servant,

LAWRENCE KEARNY,
Commander-in-chief U. S. naval force in the East Indies.

Captain the Rt. Hon. Lord GEORGE PAULET,
Commanding H. B. M. ship Carysfort.

HER MAJESTY'S SHIP CARYSFORT,
Honolulu, Woahoo, Sandwich Islands, July 17, 1843.

SIR: I have the honor to acknowledge the receipt of your letter of the 11th instant, received this morning, enclosing a copy of your communication with his Majesty Kamehameha III, and have the honor to remain, sir, your most obedient servant,

GEORGE PAULET, *Captain.*

Commodore KEARNY,
Commander-in-chief U. S. naval forces in the East Indies.

In the name and on behalf of the people of the United States of America and their government, which the undersigned has the honor to represent, and in order to explain clearly for the information of all concerned, is issued

A PROTEST.

Whereas a provisional cession of the Hawaiian or Sandwich Islands was made by his Majesty Kamehameha III, king, and Kekauluohi, premier thereof, unto Lord George Paulet, commanding H. B. M. ship Carysfort, to wit, on the twenty-fifth day of February, eighteen hundred and forty-three: And whereas the United States' interests, and those of their citizens resident in the aforesaid Hawaiian Islands, are deeply involved in a seizure of his majesty's government under the circumstances, as well as in the act of the aforesaid king and premier acceding thereto, under a protest or otherwise, to affect the interests before cited: Now, therefore, be it known that I solemnly PROTEST against every act and measure in the premises.

And I do declare that, from and after the date of said cession until the termination of the pending negotiations between his Majesty's envoys and the government of her Britannic Majesty, I hold his Majesty Kamehameha III and Captain Lord George Paulet answerable for any

and every act by which a citizen of the United States, resident as aforesaid, shall be restrained in his just and undisputed rights and privileges, or who may suffer inconvenience or losses, or be forced to submit to any additional charges on imports or other revenue matters, or exactions in regard to the administration of any municipal laws whatever enacted by the "*commission*," consisting of his Majesty King Kamehameha III, or his deputy, of the aforesaid islands, and the Rt. Hon. Lord George Paulet, Duncan Forbes Mackay, esq., and Lieutenant Frere, R. N.

Given under my hand on board the United States ship Constellation, at anchor off Honolulu, Oahu, this eleventh day of July, 1843.

LAWRENCE KEARNY,
Commander-in-chief of the U. S. naval force in the East Indies.

To his Majesty KAMEHAMEHA III,
King of the Sandwich Islands.

UNITED STATES COMMERCIAL AGENCY,
Sandwich Islands, July 14, 1843.

SIR: I am officially informed by his excellency the governor of this island that a seaman, from the United States ship "Constellation," has been convicted of horse-racing through the streets of Honolula, in direct violation of the law to prevent the same; and that the man will be confined in the fort until the penalty (five dollars) is paid.

I have the honor to be your most obedient servant,

WILLIAM HOOPER,
Acting U. S. Commercial Agent.

Commodore L. KEARNY,
Commanding U S. East India squadron, off Honolula.

UNITED STATES CONSTELLATION,
Off Honolulu, Oahu, July 14, 1843.

SIR: I am informed that one of my men is confined, under the British flag flying in your town, at the fort.

I cannot recognize any right in your excellency, while the English flag is displayed, to imprison an American citizen in said fort, and therefore I request his immediate release and a new trial, if required.

While disposed to comply with all the laws of the land, under every circumstance, during the provisional cession of this government, I am bound to regard the rights and privileges of every American citizen claiming protection from my own government. Therefore, the act complained of, coming under the Hawaiian municipal laws and reglations, is a matter for serious consideration; and, on the part of the government of the United States, I protest against having their citizens seized by the authorities of these islands and restrained under the British flag—not recognized, at this time, to be the flag of the Hawaiian islands.

In "the official correspondence relating to the late provisional cession of the Sandwich islands," I cannot perceive one word from his

Majesty Kamehameha III which authorizes the entire destruction of every Hawaiian flag on the islands, or the hoisting of the British flag on his fort; all concessions on his part having been made under "protest."

I have the honor to be your excellency's most obedient servant,

LAWRENCE KEARNY,
Commanding the U. S. naval force in the East Indies.

To his Excellency KEKAULUOHI,
Governor of Oahu, &c., &c.

FORT HONOLULU, *July* 15, 1843.

Salutations to you, the American commodore.

I have received your communication respecting your men who are confined in the fort, and would beg leave to state, that all I can say on this subject is, that in the present condition of our affairs I cannot liberate the men unless they pay their fine, on which they will be discharged.

I have no other place where I can confine prisoners. I did not raise the British flag on the fort, which is the cause of so much trouble to us at present.

Yours, with great respect,

M. KEKAULUOHI.

A correct translation—Attest:

G. P. JUDD, *Translator to the government.*

LAHAINA, *July* 19, 1843.

Salutations to you, Lawrence Kearny, commander-in-chief of the United States naval force in the East Indies.

I have received your despatch, protesting against the cession of my islands to Lord George Paulet, captain of her Britannic Majesty's ship Carysfort, and all the acts of the British commissioners which may injure the interests of any American citizen, from that time until the completion of arrangements in England.

With due respect I would inform you that, because I was in great distress, and because of the heavy demands made upon me, I ceded my islands in the confident expectation that I shall receive them again; and all the facts have been forwarded to the agents whom we have sent to arrange our affairs in England.

Moreover, there now exist serious troubles, occasioned by the abrogation of laws and by other acts of the British commissioners, and I have in consequence withdrawn from them.

Enclosed is a copy of my proclamation, setting forth the reasons for this withdrawal.

I am, respectfully, yours,

KAMEHAMEHA III. [L. S.]
KEKAULUOHI, *Premier.*

A correct translation.—Attest:

G. P. JUDD,
Translator for government.

HONOLULU, OAHU, SANDWICH ISLANDS, *July* 18, 1843.

SIR: The undersigned, citizens of the United States, interested in the welfare and prosperity of the Hawaiian government, and in consequence of recent events at these islands, which have excited our most anxious solicitude, and the exposure of American interests, which we possess and represent, and in which a large portion of our countrymen are concerned, would, for themselves, their families, and property, and in behalf of the amount of property at stake, the spirit of American enterprise here, the contiguity of the northwest territory; in behalf of the American whale fishery, and commerce concerned in the trade with the west and northwest coast of America, the islands of the Pacific, and China, and in behalf of what we hold dear on earth and would preserve for our countrymen, respectfully request you to remain at this port with the ship (Constellation) under your command, for our protection, and for the just and honorable preservation of American interest in this ocean.

The recent declaration of the nigh and noble views entertained, and of the course to be pursued and maintained by our government respecting these islands, together with our present exposed and critical position, and the interests involved, and our need of protection, will, we doubt not, satisfy your mind as to the propriety of our request; as also the necessity of your remaining here until other United States ships-of-war may arrive, that may be adequate to the maintenance of those interests which the government of the United States are disposed to cherish and maintain.

Very respectfully, we remain your most obedient servants,

PEIRCE & BREWER,	THOS. CUMMINS,
LADD & CO.,	A. JENKINS,
PATY & CO.,	R. W. WOOD,
E. & H. GRIMES,	O. P. RICKER,
E. H. BOARDMAN,	ROBERT G. DAVIS,
FRANCIS JOHNSON,	GEORGE M. MOORE,
E. C. WEBSTER,	J. B. McCLURG,
J. O. CARTER,	F. W. THOMPSON,
WM. BAKER, JR.,	JAS. H. GLEASON,
JOHN L. COLCORE,	MILO CALKIN,
EDWARD L. STETSON,	WM. SMITH,
ELI JONES,	JOHN MEEK.
JNO. ROON PFISSER,	

Commodore L. KEARNY,
Commanding United States East India Squadron.

UNITED STATES SHIP CONTELLATION,
Honolulu, Oahu, July 20, 1843.

GENTLEMEN: I have received your communication of the 18th instant. The views you express with regard to the welfare and pros-

perity of the Hawaiian government, as well as to the exposure of American interests in consequence of recent events at these islands, and your desire for me to remain with the United States ship Constellation, under my command, at this port, for the protection and preservation of those interests in this ocean, are fully understood and duly considered.

In reply, I have the honor to state, that however I may unite with you in opinion as to the object of preserving the welfare and prosperity of the Hawaiian government, I cannot take upon myself to interfere in matters connected with the provisional cession of these islands; but I have considered it my duty, as far as lies in my power, to provide against the consequences of "the recent events," by a protest to the king, a copy of which, and my letter to the United States consulate on the same subject, will be found on file in that office, to which I beg leave respectfully to refer, and which I hope will secure American interests.

Agreeably to the wishes of so large and respectable a class of my countrymen, I shall feel myself at least bound to remain in this vicinity until I am officially informed of the actual condition of the American citizens since the date of my letter to the king, under the existing act of cession; and in order that this government may not be embarrassed in any way on my part, I refer you, gentlemen, to the United States consulate, with such cases as require interposition on the part of the United States government. The consul will communicate the same under the seal of his office, in order that I may convey them to the United States government in case I leave this port before a settlement can be made.

I am, gentlemen, very respectfully, your most obedient servant,

LAWRENCE KEARNY,
Commanding the U. S. squadron in the East Indies.

Messrs. Peirce & Brewer, Ladd & Co., Paty & Co.,
and others, Honolulu, Oahu.

United States Commercial Agency,
Oahu, Sandwich Islands, July 19, 1843.

Sir: I have the honor to enclose to you a petition, signed by nearly all of the American residents of this place, requesting you to "remain at this port with the ship Constellation, under your command, for their protection, and for the just and honorable preservation of American interest in this ocean."

The undersigned is of a decided opinion that it would be imprudent for you to leave until the king, now expected here from Maui, shall have arrived, and made some arrangement for the better regulation of his government.

I have the honor to be your most obedient servant,

WM. HOOPER,
Acting U. S. Commercial Agent.

Commodore L. Kearny,
Commanding U. S. East India squadron, off Honolulu.

UNITED STATES SHIP CONSTELLATION,
Honolulu, Oahu, July 20, 1843.

SIR: I herewith transmit copies of my letters to King Kamehameha III, and Lord G. Paulet.

I have received your communication of the 19th instant, enclosing a letter from the American citizens at Honolulu, requesting me to remain here with the United States ship Constellation, under my command, to protect American interests. Enclosed is a letter in reply, referring them to letters aforesaid, to be kept on file.

So far as regards a provisional cession of the Hawaiian Islands to Lord George Paulet, I am not disposed to do anything to excite disturbance, but will confine myself wholly to the object, (while I remain,) to prevent any unjust exercise of power against American citizens, either on the part of his Majesty, or the authorities to whom he has ceded his government. As you inform me that his Majesty Kamehameha is expected in a few days, I do not doubt but matters will be fully understood.

I am, yours, respectfully,

LAWRENCE KEARNY,
Commanding U. S. East India squadron.

WM. HOOPER, Esq.,
U. S. Commercial Agent, Oahu.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 208.

RESOLUTIONS

OF

THE LEGISLATURE OF NEW MEXICO,

RELATIVE TO THE

Organization of the Territory of Arizona and the removal of the wild Indians from the Territory of New Mexico.

MARCH 19, 1858.—Referred to the Committee on Territories. Motion to print referred to the Committee on Printing.

MARCH 30, 1858.—Report in favor of printing submitted, considered, and agreed to.

JOINT RESOLUTION.

Resolved by the council and house of representatives of the legislative assembly of the Territory of New Mexico, That we concur in the views of his excellency the President of the United States, as expressed in his recent annual message to Congress, relative to the organization of the Territory of Arizona; but we most respectfully submit that the boundaries of said Territory should be as follows: Beginning at the point upon the Rio Colorado of the West where the boundary lines of the United States and Mexico meet; running thence to the east along the said line to the 109th parallel of longitude west from Greenwich; thence north, with the said parallel of longitude, to the northern boundary line of New Mexico; thence west, with the said boundary line, to the eastern boundary of the State of California to the commencement.

Resolved, further, That the government of the United States be, and is hereby, memorialized and petitioned to cause all of the wild Indians within the limits of the Territory of New Mexico to be removed to and located in that part of the Territory of Arizona as lies north of the 34th parallel of northern latitude.

Resolved, further, That our delegate in Congress be, and he is hereby, instructed to use his best exertions to carry out the purposes of these resolutions.

And be it further resolved, That his excellency the governor be, and he is hereby, respectfully requested to transmit one copy of these resolutions to our delegate in Congress, one copy to the President of the Senate, and one to the Speaker of the House of Representatives of the United States.

DONACIANO VIGIL,
President of the Council.
M. ASHURST,
Speaker of the House of Representatives.

EXECUTIVE DEPARTMENT,
Santa Fé, February 12, 1858.

SIR: By request of the legislative assembly of the Territory of New Mexico, I have the honor, herewith, to transmit to you a copy of sundry resolutions adopted by that body, and request that you will present them to the Senate of the United States.

With great respect, your obedient servant,

A. RENCHER,
Governor.

Hon. JOHN C. BRECKINRIDGE,
President of the Senate of the United States,
Washington.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 209.

RESOLUTIONS

OF THE

LEGISLATURE OF THE STATE OF WISCONSIN,

IN RELATION TO

The admission of Minnesota into the Union as a State.

MARCH 30, 1858.—Ordered to lie on the table and be printed.

JOINT RESOLUTION concerning the admission of Minnesota into the Union.

Whereas the people of the Territory of Minnesota were authorized by an act of Congress to form a constitution and State government, preparatory to admission into the Union as one of the United States of America; and whereas, in conformity with the provisions of said act, a constitution has been formed and ratified by the people of said Territory, and senators and representatives have been elected to represent said State in the Congress of the United States, who have been hitherto unreasonably denied admission to and participation in the deliberations of Congress: Therefore—

Resolved by the senate and assembly of the State of Wisconsin, That duty demands and justice requires that Minnesota should immediately be admitted into the Union as one of the United States of America. That the question of such admission ought not to be connected with or made to depend upon the admission or rejection of any other State, or the organization of any new Territory.

Resolved, That a copy of the foregoing preamble and resolution be transmitted to each of the senators and representatives from Wisconsin in Congress.

F. S. LOVELL,
Speaker of the Assembly.
E. D. CAMPBELL,
Lieutenant Governor and President of the Senate.

Approved March 24, 1858.

ALEX. W. RANDALL.

STATE OF WISCONSIN, *Secretary's Office*, } *ss.*

The secretary of state of the State of Wisconsin does hereby certify that the foregoing joint resolution has been compared with the orginac

enrolled copy in this office, and that the same is a true and correct copy thereof and of the whole of such original.

In witness whereof, I have hereunto set my hand and affixed the great seal of the State, at the capitol, in Madison, this 25th day of March, A. D. 1858. [SEAL.]

J. D. RUGGLES,
Assistant Secretary of State.

35TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 210

RESOLUTIONS

OF THE

LEGISLATURE OF THE STATE OF CALIFORNIA,

IN RELATION

To school lands in that State.

MARCH 30, 1858.—Referred to the Committee on Public Lands, and ordered to be printed.

Whereas the mountain districts and other portions of the State are unsurveyed by the general government, by means of which said districts cannot avail themselves of the benefits of the donation of the 16th and 36th sections of land to each township for school purposes, therein made by an act of Congress passed March 3, 1853; and whereas it is the plain intent and meaning of the law of Congress that every township in this State shall be entitled to two sections of land for school purposes; and whereas said districts are densely populated by an industrious and enterprising people: Therefore—

Resolved by the senate, the assembly concurring, That our senators be instructed, and our representatives in Congress requested, to use their influence to secure an appropriation for the land district of California that will enable the surveyor general for this State to complete the survey named in the preamble to these resolutions as speedily as possible, and that they take such other measures as will secure the speedy accomplishment of the desired object.

Resolved, That our senators be instructed, and our representatives in Congress requested, to secure, if possible, the passage of a law by Congress donating to and authorize the inhabitants of the townships of the mountain districts of this State, or any township not provided for with school lands, to locate two sections of land upon any of the unappropriated agricultural lands of this State.

Resolved, That his excellency the governor be requested to furnish each of our delegation in Congress and the Secretary of the Interior with a copy of the above preamble and resolutions.

Puget's Sound—the largest and most commodious harbor in the world, with its inexhaustible beds of coal—with the head of Lake Superior and the three great lakes which connect directly with the Atlantic, thus greatly reducing the cost of transit on heavy merchandise. It touches, too, long lines of steamboat navigation on the Columbia and Missouri rivers.

Resolved, That the northern line is the most accessible by navigation; passes through the lumber regions of Minnesota and Washington; has easy access to the vast pine forests of the Red river, and passing through the rich and boundless prairies of the northwest.

Resolved, That the construction of this great northern national railway can not only be the work of the present century, but it can be made the great work of the present administration, giving it undying fame, binding together this vast empire in bands of iron, and bearing the light of the Gospel, of science, and civilization across the continent, and making it the great highway between Europe and Asia.

Resolved, That the secretary of this Territory be requested to forward copies of these resolutions to the President of the United States, the President of the Senate, the Speaker of the House of Representatives, and our delegate in Congress.

Passed the House of Representatives, February 3, 1858.

J. S. M. VANCLEVE,
Speaker of the House of Representatives.

Passed the Council, February 2, 1858.

C. C. PAGETT,
President of the Council.

A true copy. Attest:

C. H. MASON,
Secretary of the Territory.

TERRITORY OF WASHINGTON,
Secretary's Office, Olympia, February 11, 1858.

SIR: By request of the legislative assembly of this Territory, I have the honor to transmit herewith resolutions relative to the construction of a northern Pacific railroad.

I am, sir, very respectfully, your most obedient,

C. H. MASON,
Secretary of the Territory.

Hon. PRESIDENT *of the Senate.*

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 212.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

ARTHUR EDWARDS AND OTHERS *vs.* THE UNITED STATES.

1. The petition of the claimants.
2. Copies of orders and letters from the Post Office Department transmitted to the Senate.
3. Depositions offered by claimants transmitted to the Senate.
4. Report of the Second Assistant Postmaster General transmitted to the Senate.
5. Letter from Postmaster General transmitted to the Senate.
6. Accounts of claimants filed in the Post Office Department, transmitted to the Senate.
7. Claimants brief.
8. United States Solicitor's brief.
9. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this first day of April, A. D. 1858.
[L. S.]

SAM L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

To the honorable the Judges of the Court of Claims:

The petition of Arthur Edwards, John Owens, and Ira Davis, respectfully showeth: That your petitioners were the managing owners

of the steamboats Baltimore, Arrow, Southerner, John Owen, and Bay City, between the years 1849 and 1853, inclusive, and are the owners of the claim herein referred to. That during the years 1849, 1850, 1851, 1852, and 1853, the boats of your petitioners were employed, by the persons having in charge the United States mails, to transport said mails to and from various ports on Lake Erie, for which, though no specific contract was entered into, it was understood that your petitioners were to receive a just and reasonable compensation. That said mails were composed of what are called the "local mail" and the "through mails;" the former being deliverable at the post offices along the route to which they were directed, and for which, upon delivery, the postmasters were directed to make compensation at a certain specified rate, and for which your petitioners have been paid; and the others, being made up for distant points, were to be forwarded to those points, but were carried, over so much of their route as your petitioners' boats travelled, on their boats, for which your petitioners have received no compensation whatever. And your petitioners would state more particularly that they carried the through mail (exclusive of the local mail for delivery) on the steamer Arrow, daily, Sundays excepted, both ways, between Sandusky city and Detroit, from the first day of March to the first day of December, 1849; also from the first day of March to the first day of December, 1850; also from the first day of March to the first day of December, 1851; also from the first day of March to the first day of December, 1852. And on the steamer Bay City, from the first day of March to the first day of December, 1853.

That they also carried the United States mail (exclusive of the local mail for delivery) between Detroit, in Michigan, and Cleveland, in the State of Ohio, daily, on the steamer Southerner, from the 7th day of March to the 21st day of November, in 1850; also from the 19th day of March to the 21st day of November, 1851. Also on the steamer Baltimore, from Detroit to Cleveland, from the twelfth day of April to the 21st day of November, 1852.

That they also carried the United States through mail (exclusive of the local mail for delivery) between Toledo and Detroit, on the steamer John Owen, daily, from the 31st day of March to the 30th day of December, 1851; also on board the Arrow, from the 30th day of March to the 31st day of December, 1853.

And your petitioners further show, that they have applied, through your petitioner, Arthur Edwards, to the Postmaster General for compensation for said service, but that he has hitherto refused to make such compensation, although, as your petitioners are informed, it is usual to make such compensation, and, as your petitioners are also informed, payment has actually been made for the carrying of the through mail on the Toledo and Cleveland route, on board the steamer Troy, which was plying in conjunction with your petitioners' boats on alternate days. But whatever may be the usage, your petitioners received and carried said *through* mails at the request of the agents of the government, and have faithfully transported the same, as requested to do; and the United States, having derived the benefits and

advantages of such transportation, are bound to pay a reasonable and fair compensation therefor.

And your petitioners would further state, that they have, through your petitioner, Arthur Edwards, their agent, filed in the General Post Office Department an account for said service, amounting to about twenty-five thousand one hundred and eighty dollars, which sum was arrived at by as near an estimate as they could make of the amount of local matter delivered at the local post offices, and computing the through mail matter at about four times as much as such local mails. But your petitioners find, by the actual returns of the local mail matter, that they made their estimate much too low, and they ask that they may be permitted to prove the actual amount of such local mail matter, and thus arrive at a more correct statement of the account than that heretofore rendered. And your petitioners pray the judgment of your honorable court for the actual value of the service rendered by them, and received by the United States, which amounts to the sum of fifty thousand dollars; and will ever pray, &c.

IRA DAVIS,
ARTHUR EDWARDS,
J. OWEN.

A. H. LAWRENCE,
Att'y for Petitioners.

STATE OF MICHIGAN, }
County of Wayne, } *ss.*

Personally appeared before me, a justice of the peace in and for said county, duly qualified, &c., Arthur Edwards, one of the petitioners named in the foregoing petition, and made oath that the facts stated in said petition are true, to the best of his knowledge, information, and belief.

JONA. HUDSON,
Justice of the Peace, Wayne county, Michigan.

TRENTON, *Wayne county, Michigan, June* 26, 1855.

UNITED STATES COURT OF CLAIMS.

ARTHUR EDWARDS *et al.*,
vs.
THE UNITED STATES. } Petitioners' brief.

I. There was an express contract between the United States and the petitioners.

1. The order of the Postmaster General of the 21st March, 1849, instructed the postmasters at the different points "to make up and forward mails daily between their respective offices, in boats making the greatest expedition, at one cent each for letters, and half a cent each for newspapers, to be paid at the office to which the letters or newspapers are delivered."

And, in pursuance of the above order, the various postmasters were

instructed "to make up and forward mails between their respective offices, in boats making the greatest expedition, at one cent for letters, and half a cent for newspapers, to be paid at the office to which the letters aforesaid were delivered."

Under this contract the proprietors of the boats were entitled to compensation for all the letters transported by them, at the rate of one cent for each letter, and half a cent for each newspaper.

These facts it was not in the power of the steamboat proprietors to ascertain; but it was in the power of, and the duty of, the government so to ascertain, or, if not, it provides them with no excuse for not paying according to their contract.

The statutes on this subject give some light in relation to the duties and the proper compensation.

4 Stat. at Large, 103, chap. 64, 2d sess., 18th Cong., § 5, 1825.
" 104, sec. 6,
" 106, sec. 17,
" 107, sec. 18,
5 Stat. at Large, 736, chap. 3, 2d sess., 28th Cong., 1845.

By these acts it appears, among other things, that the Postmaster General was "authorized to have the mail carried in any steamboat or other vessel which shall be used as a packet in any of the waters of the United States, on such terms and conditions as shall be considered expedient, provided that he does not pay more than three cents for each letter, and more than one half cent for each newspaper, conveyed in such mail."—(See sec. 5 of act of March 3, 1825, 4 Stat., 103.)

And by the 14th section of the act of Congress of March 3, 1845, (5 Stat., 736,) it is enacted "that the Postmaster General shall have power, and he is hereby authorized, to contract with the owners or commanders of any steamboat plying upon the western or other waters of the United States for the transportation of the mail for any length of time or number of trips, less than the time for which contracts for transporting the mail of the United States are now usually made under existing laws, and without the previous advertisements now required for entering into such contracts, whenever, in his opinion, the public interest and convenience will be promoted thereby, provided the price to be paid for such service shall in no case be greater than the average rate paid for such service under the last preceding or then existing regular contract for transporting the mail upon the route he may so for a less time contract for the transportation of the mail upon."

All these routes by water between Detroit and Cleveland, Detroit and Toledo, and Detroit and Sandusky, were regular mail routes under the provisions of acts of Congress, especially the 3d section of the act of Congress of March 3, 1823. They were, of course, entirely distinct from and unconnected with the land routes. During the times when the mail was transported, for which compensation is now claimed, there was no regular contract for carrying the mails on either of the water routes, although since that time such contract has been made, and now exists. The power, therefore, of the Postmaster General was ample, and only limited by his discretion.

II. In addition, there was the express agreement by Mr. A. C. Harris on behalf of the Post Office Department.

He says in his deposition: "I requested them (viz: the captains of the steamers) to take the mail aboard, and assured them that they would be paid for the service, and in so doing I acted under the direction of the Post Office Department."

Here was an express agreement, on the part of an authorized officer of the United States, that compensation should be made for carrying the through mail, "under the direction of the Post Office Department." He was a special agent of the Post Office Department, and the power of the Postmaster General to appoint special agents is recognized by repeated acts of Congress—the last of which is 9 Stat., 593, sec. 4, chap. 22, 31st Cong., 1851.

III. There was an implied contract on the part of the United States to pay for this service.

1. The service was performed.

2. At the request of the United States, by its officer.

By the direction of the Postmaster General the mail was placed on board of steamboats.—(See order of 1849.)

The postmaster directed it to be placed on board. Mr. Harris, the special agent, directed it to be placed on board, and agreed that a reasonable compensation should be paid.

3. The steamboat proprietors never agreed to transport the through mail without compensation.

The order was given by the Postmaster General on the 20th March, 1849, and it was understood that they were to receive compensation for that mail, and they constantly claimed such compensation. A. S. Williams, the postmaster at Detroit, from April, 1849, to July, 1853, in his deposition, says:

"By reference to my letter-book, I find I wrote the Post Office Department, at Washington, in May, 1849, and September, 1849, advising them of the claim made by steamboat captains generally for compensation for carrying the through mail."

It thus appears that *immediately* the steamboat captains claimed compensation for the through mail; that this claim was communicated by the Detroit postmaster to the Post Office Department; that they did not at the time, or at any subsequent time, disavow their liability for the payment.

Captain S. J. Atwood, who was master of the Arrow and Bay City from 1849 to 1853, inclusive:

Question. "Did you ever receive any compensation for carrying the through mail, or did the claimant?"

Answer. "I did not; often asked for it, but never received it, &c., &c."

Daniel M. Haskell, postmaster at Cleveland from May, 1849, to April, 1853:

Answer. "The local mail was but a small proportion of the whole mail carried. From my recollection of it, I should say it was not more than one-tenth of the whole bulk of mail passing over this route. My attention was frequently called to it by the captains of the boats calling on me for pay for the through mail, insisting that it was eight or ten times as much as what they got for it."

IV. The Post Office Department have recognized their obligation to pay for the transportation of the through mail under this order in other steamboats. Compensation has been made by the Post Office Department to steamers Buckeye State, Alabama, Baltic, Cleveland, Southerner, Fashion, Sultana, and Troy.

Of these cases, all but one were by the Postmaster General, during whose continuance in office these services were rendered. He, of course, best knew what was the understanding of the department as to payment for this service, and would not have paid for the through mail if not legally bound to do so. The number of these cases precludes all supposition of any payment by accident or mistake. It was clearly done understandingly, and with a full knowledge of all the facts.

In the statement of Mr. Dundas, he says that a decision had been made in the case of Mr. Ward, "who claimed an allowance for through mails between Buffalo and Detroit," and that his claim was disallowed. This payment was not under the order of the 21st March, 1849, as the route between Buffalo and Detroit was not one of the routes named. Nor were these parties in any way connected with Mr. Ward, or informed as to his claim. It does not appear that there was any other case where the compensation had been applied for and refused by the department; and, on the contrary, eight distinct cases where the compensation was claimed and received.

V. There is nothing in the order of the Postmaster General of the 7th June, 1851, at all affecting the rights of these parties.

1. This was simply an order of the Postmaster General addressed to the postmasters, and it does not appear that it was ever communicated to the claimants or their agents. They neither expressly, nor by implication, assented to it.

2. The order was not sent to the postmaster at Detroit at all, nor to the postmaster at Cleveland until the claimants were far advanced on the last season of steamboating between Cleveland and Detroit.

3. The contract was not *rescinded*, except as to the route between Cleveland and Buffalo, between which a special contract had been made.

4. These instructions, both to the postmasters at Cleveland and at Toledo and Sandusky, had nothing to do with the compensation to the steamboat owners for carrying the through mail. It was a mere prohibition to the postmasters to pay where, according to the rules of the Post Office Department, they had not the means of ascertaining the amount to be paid.

5. That the department itself did not understand that this order was to prevent an adequate compensation for the through mails is apparent from the fact that at the very time, and afterwards, they authorized their special agent to agree that the service should be paid for by the department, and subsequently did pay in every case where application was made during the time that the department continued under the administration of the same officer that authorized the agreements.

VI. What is the rule of compensation for the service of carrying *the through* mails?

1. One rule of compensation is given by the order of 1849. This was to be ascertained by the department itself. The number of letters *could not* be ascertained by the claimants. If the arrangements and regulations of the department had been such as to have enabled the postmasters to ascertain the whole number of letters, no question would have arisen either as to the *liability* to make compensation, or as to the *amount* of it. The government cannot certainly take advantage of their own omission in the absence of any negligence on the part of the claimants.

2 A very ready and easy mode of ascertaining what would be a fair compensation is given by a comparison between the through mail and the local mail, both of which were carried by these boats at the same time. The service was precisely of the same character. Both mails were put on board and taken from the boats by the agents of the department, and the labor and responsibility were the same in both cases.

3. That the amount paid for transporting the local mail was a very moderate one is apparent. 1. From the fact that it is, for letters, but one-third of the amount to which by law the department was limited, viz: three cents per letter. 2. By computing the number of trips of these boats during which they carried the mail, it appears that the average compensation received (being for the whole time 10,544 $\frac{95}{100}$ dollars) would be less than three dollars and seventy-five cents per passage. 3. By the express testimony of the witnesses, especially the late postmaster at Cleveland.

4. The amount paid for transporting the local mail being thus furnished by the department, the inquiry is, what proportion did that bear to the whole amount transported? and the answer furnishes a perfectly easy and just rule of compensation.

The testimony on this subject is perfectly clear and satisfactory, and accords entirely with the experience of all as to the relative amount of local and through mail on the great thoroughfares of the country. Full extracts from the testimony accompany this brief. From this it will appear that, by the testimony of the postmaster and two clerks, at Cleveland, the amount of through mail is said to be from ten to twenty times greater than the local mail. At Detroit the witness best acquainted with the fact, and whose duty it was personally to handle and transport the mails, and to separate the local from the through mails, says that the through mail was five or six times as great as the local mail. The postmaster and clerk in the post office at Detroit give a less amount, but it appears that a large portion of the through mail never went to the post office, but was taken directly from the steamboat to the railroad, and of course did not come under the eye of these officers.

In addition to these, are the depositions of numerous witnesses with the best means of knowledge on the matters concerning which they testify, viz: the mail carriers at Cleveland and Toledo, and the captains and clerks, or stewards, of all the steamboats, all of whom swear positively, and of their own knowledge, on the subject. With this proof it will not be difficult for the court to arrive at a just determination of the amount to be paid. The average of the testimony

shows the amount of through mails to be from 6½ to 7⅝ more than the local mail.

It thus appears that a contract was made by the Post Office Department, authorized by law to pay for transporting the through mail, not only by an express order of the department, but by an agreement of an authorized agent, acting under the direction of the department; that the claimants in the beginning and repeatedly claimed the fulfilment of the contract; and that this claim was not only made to the postmasters, but communicated to the department at Washington; and that in numerous similar cases the department recognized their liability, and paid for transporting the through mail, without the shadow of proof that the department, or any of its officers, at any time during the continuance of the service, ever intimated that such service was not to be paid for. And these facts fully show that the department themselves so understood it. The declaration of the subsequent Postmaster General, made years afterwards, as to what the parties *understood*, is the mere expression of his own opinion—is contradicted by his own act in a similar case, and not only wholly unsustained by proof, but directly opposed to all the proof in the case, and, of course, entitled to no weight whatever, even if it were admissible as evidence at all.

It is equally clear that for this entire service no compensation whatever has been made.. The *letter* of the postmaster at Sandusky is clearly not admissble as evidence; and if it is understood as stating that a part of the through mail had been paid for at Sandusky, it is clearly incorrect, and opposed to the direct and positive evidence of the persons to whom, if at all, such payment was made.

JOHN A. ROCKWELL,
Counsel for Petitioners.

Abstract of the testimony in the case of Arthur Edwards et al. vs. *The United States.*

L. A. PIERCE, captain of the steamer Southerner, testifies as follows:

I was master of the steamer Southerner, running on Lake Erie, between the cities of Cleveland, Ohio, and Detroit, Michigan. I began running said boat as aforesaid the 17th day of March, 1850, and discontinued for the season the 21st day of November following.

The next season I commenced running said boat the 19th day of March, 1851, and discontinued the 20th of November following.

Said boats ran daily as aforesaid, carrying the United States mail through, and local the two seasons. I mean by the local mail, mail which was made up and destined for Detroit, and *vice versa*. By through mail, I mean that which was destined for points and places beyond Detroit on the one side, and Cleveland on the other. I think the through mail would average from six to eight times as much as the local mail. I took care of the mail; it was especially entrusted to my care.

Questions by counsel for the government.

State how many bags of through mail were carried each trip.

Answer. I should judge from eight to ten bags per day.

State how many bags there were of local mail per day.

Answer. There was one bag of letters and one bag of papers.

Question. Did you receive pay for carrying this mail; and if so, how much, and for what portion of it?

Answer. I received about two hundred dollars each season, and that for the local mail only.

PATRICK FARLEY, the mail messenger at Cleveland, testifies as follows:

Question. What was your occupation during the season of navigation of 1850 and 1851?

Answer. I was then carrying the mail between the post office of this city and the boats running on Lake Erie. I superintended the carrying of the mail as aforesaid personally; was myself always present.

Question. How was the mail carried from Cleveland to Detroit, and from Detroit to Cleveland, during the year 1850?

Answer. I think it was carried on the steamers Southerner and Baltimore.

Question. State what boats carried it in 1851.

Answer. I think the same boats.

Question. State in what manner you discharged the duties of mail carrier during those seasons.

Answer. I received the mail on the arrival of the boats, and carried it to the post office, and carried the mail from the post office to the boats on their departure, daily, during those two seasons.

Question. State what proportion of the mail carried by these boats was local, and what proportion was through mail.

Answer. The greater proportion was through mail. I think the local mail was not more than one-fourth as large as the through mail. By local mail, I mean that which stopped at Cleveland and Detroit; and by through mail, I mean that which is destined to points beyond Cleveland on one side and Detroit on the other.

S. T. ATWOOD says:

I was master of the steamboat Arrow in 1849, 1850, 1851, and 1852, and was master of the Bay City in 1853, owned by the claimants as managing owners.

The Arrow generally ran between Detroit and Sandusky, and occasionally between Detroit and Cleveland, and the Bay City did the same in 1853.

Question. Did you, while master of these boats, carry the through and local mails?

Ans. I did.

Question. Did you carry the through eastern mail before navigation opened to Buffalo during the years mentioned; and if so, how many trips did you usually make?

Answer. I did in each year, except in 1853, and generally made from three to seven trips each time, carrying the mails both ways, for

which no compensation was received, except for delivery of local mail at Detroit, and sometimes at Cleveland.

Question. What was the largest mail you carried of through mail for which you received no compensation?

Answer. Eighty bags; the bags were full sized leather and canvas bags. The through mail was three-fourths or four-fifths of the mail carried.

Question. Did you receive any compensation for carrying the through mail, or did the owners?

Answer. I did not; often asked for it, but never received it. The claimants did not, for the captains of the boats were only authorized to receive it and receipt for it.

In his second examination, in answer to the question, What time did these boats commence running in the spring, and what time did they lie up in the fall? he says:

They commenced running as soon as the ice would permit in the spring, generally about the 20th of March, and ran until the ice stopped them in the fall, which was, on the average, about the 20th of December.

They made daily trips over the route twice each day, down and back every day, except Sunday; and excepting also from four to seven early in the spring, when they ran to Erie and Buffalo.

Question. How often was the United States mail carried over this route on the said boats during the period last mentioned?

Answer. It was carried every day twice over the route, or daily both ways, during the season of navigation of those years.

HENRY G. VORCE testifies as follows:

Question. Were you the captain of the steamer Baltimore, running between Detroit and Cleveland, during the navigation season of 1851?

Answer. I was.

Question. Did you carry the United States mail on your boat, during that year, on every trip?

Answer. I did.

In his second examination, in answer to the question, What did this mail consist of? he says:

The mails going west consisted of mails destined to Detroit, Chicago, and points west; and the mails going east generally consisted of matter marked for Cleveland, Columbus, Pittsburg, Baltimore, and other points south and east.

The mails destined and marked for Detroit and Cleveland, at each end of the route, I understand as local mail, and mails going to points beyond those offices as through mails.

Question. Can you tell the average number of bags per trip you carried during this season?

Answer. I cannot recollect definitely. I recollect there were frequently as many as twenty bags or more, and it often occurred there were less; but the average number I cannot state.

Question. How much larger do you mean to be understood was the through mail over this route than the local mail?

Answer. The through mail was four times larger than the local mail.

AUG. S. JOHNSON testifies as follows:

Question. What was your business in the year 1851?

Answer. I was clerk of the steamer Baltimore.

Question. Who had charge of the mails aboard of your boat?

Answer. I considered myself responsible for the proper care of the mail, and did have the general supervision of it; and when it was brought aboard, I saw it was locked up, and at the end of the route properly delivered to the agent, who carried it to the post office. I often handled it myself, and saw to its being put into the mail room and locked up, when it would hold it all.

Question. Do you remember what proportion of the mail so carried was local and what through mail?

Answer. The local mail was but a small proportion of the whole mail carried over this route. My recollection of it is, that the through mails, destined to points beyond Detroit going west, and beyond Cleveland going east and south, were eight or ten times as much in bulk as the local.

J. R. NELSON, mail messenger at Toledo, testifies as follows:

Question. What was your business during the season of lake navigation in the years 1851 and 1853?

Answer. Carrying the mail to and from the steamboats and post office in 1851; in 1853 I carried the mails to and from steamboats, railroad, and post office. I attended at the cars and steamboats with the necessary means of conveyance to take the mails as they arrived to the post office, and in turn took the mails from the post office to the cars and boats.

Question. In what manner was the mail carried between Toledo and Detroit during the season of lake navigation in the years 1851 and 1853?

Answer. By steamboats. I cannot tell what years particular boats ran. Upon examination I find that the steamers John Owen and John Hollister formed the line in 1851. In 1853 the line was composed of the Arrow and the Dart. The boats usually made the trip to Detroit in one day and back the next.

Question. What proportion of the mails carried on these boats during these years over this route was local and what through mails?

Answer. It is hard for me to tell how much local mail there was, but I should think the through mail when carried on these boats was four times as large as the local.

L. W. BEBEE testifies as follows:

Question. What was your business from September, 1849, to July, 1855, inclusive?

Answer. My occupation was that of baggage-master at the Michigan central depot at Detroit, and depot mail agent and messenger of the post office department at that city. I carried all the mails that were carried, except the mail to Pontiac; and such as went by stages, from and to the post office, to and from the cars, and steamboats, &c.

Question. In what manner did you attend to said business as deputy mail agent, and perform the duties of said office, during the time last mentioned?

Answer. I generally attended personally upon the arrival and departure of the several boats and cars running to and from Detroit, receiving and delivering said mails personally, and assorting and separating the local mails directed to the Detroit post office from the through mails destined to points beyond Detroit, and delivering such local mails to the Detroit post office, and sending the through mails on by cars and boats towards their destination. The local mail for the Detroit post office was delivered immediately to the post office, and the through mails were generally taken directly from boats to cars and from cars to boats.

Question. What proportion of the said mail matter coming to and passing through Detroit was local mail, and what through mail?

Answer. The through mail was five or six times larger than the local mail—that is to say, it was, on an average, five or six times larger, for at some times it was not so large, but at others a great deal larger.

Question. What boats, carrying the mails, ran between Cleveland and Detroit, Sandusky and Detroit, Toledo and Detroit, from the years 1849 to 1854? How long did each boat run, and who was the reputed owner or owners?

Answer. The Southerner commenced running in the fall of 1849, and continued running until the close of navigation between Detroit and Cleveland; she commenced running again in the spring of 1850 with the Baltimore. The two boats made daily trips between Detroit and Cleveland. Both boats were owned by Arthur Edwards, and carried the mails daily. In 1851, upon the opening of navigation, the Southerner commenced running on the same route with the St. Louis, going down one day and back the next. The St. Louis was owned by Capt. Ward, and the Southerner by Capt. Edwards. On the Sandusky and Detroit route the Arrow ran and made daily trips. She was owned by Arthur Edwards. This was during the years 1849, 1850, 1851, and 1852, and part of the year 1853, and which time the steamer Bay City took her place. On the Toledo and Detroit route the John Owen ran in part of 1849, the whole of 1850, 1851, and 1852, and part of 1853. During this time she carried the mails every other day. She was owned by Arthur Edwards. The boats on this line did not carry the mail all of this time, but only during a portion of the years above mentioned; I won't be positive as to the time.

A. C. Harris testifies and says:

From July, 1850, to March 1853, I was acting as a special agent of the Post Office Department.

Question. What were the duties of your office?

Answer. Attending to the transportation of the mails, and other duties assigned by the department.

Question. In what districts did your duties require your attention?

Answer. Mainly in Ohio and Michigan.

Question. In attending to the duties of your office, did you often pass over the route from Cleveland to Detroit, Sandusky to Detroit, and Detroit to Toledo, by steamboat during the period last mentioned, having the mails in charge?

Answer. I did pass very often over those routes during that period, and always gave more or less attention to the mails.

Question. What amount of the mail conveyed over these routes was through mail, and what local mail?

Answer. I think that the local mail was, on an average, not to exceed one-fifth of the through mail, and very often not more than one-eighth.

Question. What do you understand by the terms through and local mails?

Answer. The local mail is that which is destined to the post office at the end of the route, to be opened there. The through mail is that which is destined to points beyond such offices.

Question. How was the mail carried over the above mentioned routes during the period last mentioned?

Answer. On the Cleveland and Detroit route they were carried by the steamers Southerner and Baltimore during 1850 and 1851; by the steamers Arrow and Bay City on the Sandusky and Detroit route during the time of my service as such agent; between Toledo and Detroit by the Arrow and Owen.

Question. By whose direction were those mails put aboard of the several boats running over the routes above mentioned?

Answer. By the direction of the postmasters generally, and sometimes by my direction.

Question. Under what circumstances, and by what authority, did you direct the mails to be carried by these boats?

Answer. The circumstances were, that the captains often objected to receiving the great through mails, saying that the postmasters refused to pay them anything, except for the local mails; and as they got nothing for it they would not carry it, unless I would undertake to see them paid. I requested them to take the mail aboard, and assured them that they would be paid for the service, and in so doing I acted under the directions of the Post Office Department. It often occurred that the mail could not be got to the boat on the arrival of the cars by the time of leaving. In such cases I often requested the captains to delay until the mails could be put aboard, and they did so, waiting sometimes from a half hour to an hour and a half.

L. W. MARTIN testifies as follows:

Question. Were you in the employ of the claimants in the years 1850, 1851, and 1852?

Answer. I was.

Question. In what capacity?

Answer. As clerk and steward of the steamer Southerner.

Question. Between what points did the steamboat Southerner run?

Answer. She ran between Detroit and Cleveland in 1850 and 1851, and between Detroit and Toledo in 1852.

Question. Did she carry the through and local mails while you were on the boat?

Answer. She did.

Question. Was it part of your duty to receive and deliver the mails at the points at which the boats touched?

Answer. It was.

Question. What proportion should you think, from your observation, would the through mail bear to the local?

Answer. The through mail was four or five times larger than the local.

Question. Did your boat carry the through mail for which no compensation was received before navigation was open to Buffalo to points below Cleveland?

Answer. She did.

Question. How many trips did she make?

Answer. She made from three to six.

Question. What was the average amount of through mail carried generally?

Answer. I can't state particularly, but one mail numbered 128 bags, which I counted myself.

Question. Were the claimants in this suit the managing owners of the Baltimore, Arrow, Southerner, John Owen, and Bay City, between the years 1849 and 1853?

Answer. They had the control of those boats from 1849 to 1853, inclusive, during such time as they were running, and were the persons entitled to receive compensation for such service.

The John Owen was owned by Edwards and Davis, and run between Detroit and Toledo, from the spring of 1849 to the fall of 1852, inclusive.

The steamer Southerner was owned and controlled by Arthur Edwards, and run from the ports of Detroit and Cleveland, in 1850 and 1851.

The steamboat Baltimore was chartered by Edwards and Davis from the owners, for the season of 1851, and run between Detroit and Cleveland.

The steamboat Arrow was owned by Edwards and Davis from 1849 to 1853, inclusive, and run in 1849 to 1852 between Detroit and Sandusky; in 1853 between Detroit and Toledo.

The Bay City was owned by Davis and Owen, and run between Detroit and Sandusky in 1853.

Question. Did the aforesaid boats carry the through and local mails between the different ports stated, during the years aforesaid, during the season of navigation?

Answer. They did.

A. S. Williams testifies as follows:

Question. When were you first in possession of the post office at Detroit, and until when were you postmaster?

Answer. In April, 1849, and until July 1, 1853.

Question. What boats carried the mails from here to the points named in the petition of the claimants?

Answer. The Arrow, Bay City, Southerner, and other boats, mentioned in the petition of claimants.

Question. Did they carry the through mail as well as the local?

Answer. They did.

Question. From your knowledge of the business, what proportion did the through mails bear to the local?

Answer. By reference to my letter-book, I find I wrote the Post Office Department, at Washington, in May, 1849, and September, 1849, advising them of claims made by steamboat captains, generally, for compensation for carrying through mails, and then expressed the opinion that the through mail was more than double the local mail delivered for distribution here, and that I thought my estimate would fall far short of the facts.

Question. Did the through mail increase much from that time till the fall of 1852?

Answer. It did.

Question. What proportion do you think the through mail bore to the local mail in 1850, 1851, and 1852?

Answer. I should think the through mail was from three to four times greater than the local. The through mail embraced everything of this State.

Question. Did you ever pay for the transportation of the through mail by packet?

Answer. I did not.

Question. At what time did you receive instructions from the department for paying for the mail brought by steamers?

Answer. I found, on taking possession of the office, in April, 1849, instructions to my predecessor, dated March 26, 1849, under which I acted.

GEORGE D. BAPTIST testifies as follows:

In the years 1849, 1851, and 1842, I was on the steamboats Arrow and Southerner together at different times; I was on the Southerner in 1849 and 1852; on the Baltimore in 1851.

Question. Was it part of your duty to receive and take care of the mail bags on board those boats?

Answer. It was.

Question. From your knowledge, what proportion did the through mails bear to the local mails, averaging the whole time you were on these boats?

Answer. At a low estimate, the through mail was five times larger than the local mail. We once carried a mail which we estimated about eight tons; we took it on at Erie and left it at Toledo.

D. D. BEBEE testifies:

In 1852 I resided at Cleveland, Ohio, and was clerk in the Cleveland post office. I think the through mail was at least twenty times larger than the local mail (during the year 1852.) The through mail was much more bulky than the local, and far more trouble to handle.

JAMES WELCH deposes:

I was clerk in the Cleveland post office during the years 1851 and 1852.

Question. What were your duties as such clerk?

Answer. They consisted mainly in distributing the mails and assorting and delivering the same to the mail carrier, who carried the mails between the steamboats and cars and the post office.

Question. How were the mails carried between Cleveland and Detroit during these years?

Answer. By steamboats running daily.

Question. What did the main bulk of the mail carried over that route during those years consist of?

Answer. The mail going east consisted mainly of the through mails, destined for Pittsburg, Baltimore, Washington, Columbus, Cincinnati; and going west, of matter from those and other offices going to Chicago and other offices west, together with the local mail between Detroit and Cleveland post offices.

Question. What was the relative amount of local and through mails carried over the said route from Cleveland to Detroit?

Answer. From my recollection of it, I think the through mail, so carried over this route, was in bulk from ten to fifteen times as large as the local mail. I think it safe to say that, on an average, it was ten times as large as the local mail.

Question. What were your means of knowing the relative proportion between the local and through mails?

Answer. I was in the habit of handling the mails with my own hands, in delivering it to the mail carrier, and in separating it on its arrival, for opening the local mails for delivery.

DANIEL M. HASKELL deposes:

I was postmaster at Cleveland, Ohio, from May, 1849, to some time in April, 1853.

Question. Did you attend personally to the duties of your office during said time?

Answer. I did. It (the mail) was carried by the steamers Baltimore and Southerner during 1850, and the Southerner and St. Louis during 1851.

Question. How often was the mail carried over this route during these years, and what mail was so carried?

Answer. It was carried daily, Sundays excepted, both ways. The mail going west consisted of the local mail between my office and Detroit, and the great southern mail from Baltimore, Washington, Pittsburg and other southern towns, destined to Detroit, Chicago, and other points west. Going east, it consisted of the mail from Chicago, Milwaukie, and other western towns, (also the local mail from Detroit,) destined to Pittsburg, Baltimore, and Washington, and the country south and east of Cleveland.

Question. What proportion of this mail, passing over this route, was local and what through mail?

Answer. The local mail was but a small proportion of the whole mail carried. From my recollection of it, I should say it was not more than one-tenth of the whole bulk of mail passing over this route. My attention was frequently called to it by the captains of the boats calling on me for pay for the through mail, insisting that it was eight or ten times as much as what they got pay for.

Question. Did you pay them for carrying the through mail, or any part of it?

Answer. I did not. I paid for carrying the local mail between *Cleveland* and Detroit, at the rate of one cent per letter, and half a

cent for papers delivered at my office, to the captains of the boats so bringing such mails.

Question. From your knowledge of the amount of mail passing over this route, what would be a reasonable compensation for carrying the great through mail upon the steamboats over this route?

Answer. I have no means of estimating the through mail otherwise than as the local was estimated, at one cent per letter and half a cent for a newspaper, which, I think, was a reasonable price; and I think it was worth the same price to carry the through mail as the local, according to its relative proportion.

Question. Did the boats above mentioned run in connexion with the railroads terminating at Cleveland and Detroit?

Answer. They did form a line between Detroit and Cleveland, running in connexion with the railroads at those points, being the only boats on that line during said two years.

Question. Did you send both the local and through mails over that route by said boats by the instructions of the Post Office Department?

Answer. I did.

IN THE COURT OF CLAIMS.—No. 55.

ARTHUR EDWARDS, IRA DAVIS, AND JOHN OWEN *vs.* THE UTITED STATES.

Solicitor's Brief.

This claim can only be sustained on the ground of a contract, express or implied. To ascertain whether there is any contract for payment of the through mail, recourse must be had to the laws authorizing this mode of contract.—(See 6th section of the act of March 3, 1825, p. 8 of Post Office Laws; 13th and 14th sections of act of March 3, 1845, same book, pp. 73, 74; section 13 of act of March 3, 1847, same book, pp. 93, 94.)

These provisions compel each steamboat captain, under a penalty, to deliver to the post office all letters brought by him to the port at which he stops, and authorize the postmaster to pay not exceeding two cents for each letter or package; and the postmaster is forbidden (p. 73) to receive for transportation, by mail, any package exceeding three pounds, (pp. 93, 94,) the conveyance of these letters to be subject to such regulations as the Postmaster General may prescribe.—(See Regulations, chap. 20, 21, pp. 40, 41.) From regulation 163, p. 41, it appears that one cent only will be paid on letters delivered to post offices on Lake Erie. The Postmaster General could not authorize such an arrangement except under the laws above cited.

The instructions of the Postmaster General to the deputies on the lake are necessarily to be construed in reference to these laws and the business arrangements of the Post Office Department. The postmasters at Sandusky, &c., were mere agents, and could only act under the power given in those instructions, and could not bind the department further than those instructions. Every person trading with them was bound to look to the instructions. The first instructions

were given March 21, 1849, and are addressed to the postmasters at Cleveland, Sandusky, Toledo, and Detroit. These offices are directed to make up and forward mails daily between Cleveland and Sandusky, Cleveland and Toledo, Cleveland and Detroit, and Sandusky and Detroit, at one cent per letter and a half cent per newspaper, between these points as named. No mail was authorized between Toledo and any point, except Sandusky. These instructions, on their face, can relate only to the local mail, for that was the only mail these postmasters could make up. The through mail is the mail made up at points beyond these offices, and, to pass to other points beyond them, were placed in bags, with which these postmasters could not interfere. They had no right to open bags containing mail which could not be distributed at their offices, and the letters could not be examined and counted there. They could not make up such mails—they were made up and forwarded before. The words "make up and forward" do, then, clearly show that the instructions related to the local mail, and not to the through mail. The letter of the 6th of May, 1851, to the postmasters at Toledo, Sandusky, and Cleveland, shows this is the true construction. Why inquire whether these postmasters were paying for through mail, and the instructions under which they did so, if the instructions were supposed to authorize them to do so?

The inquiry how they counted the through letters, if they were paying for them, implies that this act would have been a breach of duty. The reply from the postmaster at Toledo, dated 12th of May, shows he paid for local letters only, and did not pay for through letters, and does not intimate that there was any contract, or understanding, or expectation of payment, on the part of the contractors for this mail.

The reply of the postmaster at Sandusky shows he acted under instructions of 1849. When he came into office there was no through mail, but when the Mad River and Lake Erie railroad was completed, a through mail to Cincinnati and Columbus came to his office. He estimated these mails low, and when the great southern mail came through his office, his funds were insufficient to pay; and on the 7th of October, 1850, he wrote for funds, and paid captains of boats what was due them. At present the through mail was of but little consequence. The postmaster at Cleveland has paid only local mails. He had written several times for instructions as to mails brought by steamboats, and received no reply. June 7, 1851, instructions were given to postmasters at Sandusky and Toledo that they were to pay one cent on letters and a half cent on newspapers delivered at their offices, and one cent on packages to other offices, for which they were proper separating offices. The postmaster at Cleveland was instructed that, as to his office, the order of 21st March, 1849, was rescinded, except as to boats delivering mail from Detroit and Toledo, and, as to them, no through mail matter was to be paid for.—(See, also, letter to postmaster at Cleveland containing these instructions, dated June 7, 1851.)

Now, if it be possible for a principal, by distinct and specific powers, to prevent an agent binding him in a contract, the department has in this case prevented the deputy postmasters from binding them to pay for

through mails in this case. The original instructions of 1849 clearly did not authorize them to be paid for, and the instructions of June 7, 1851, express'y prohibit it. The postmasters at Toledo and Cleveland do not intimate that they ever violated these instructions, and the postmaster at Sandusky says he had paid everything due the steamboats for through mails up to December, 1850, and that the through mail up to May 21, 1851, was of little account. Since that time there has been no violation of the instruction. Clearly, then, the through mails were never designed by the department to be paid for under this contract; but the department did design the payment authorized on the local mails to be in full for all mails, and the claimants must have so understood it. The claimants were running their boats as an independent enterprise—a packet line for freight and passengers—between the points to which they carried the mail. They ran without any invitation from the government; and if they could not get the mail, they would run without it. If they could get it, they would add the pay to their profits. They, by the contract, got $10,514 95 mail pay for five years or seasons. The government authorized the postmaster to send mails at a given rate, but refused to pay anything for the through mail. The postmaster, of course, gave the mail to the steamboats that would carry the entire mail for the sum paid for the letters and papers to be delivered and distributed at the local offices; and no additional pay could, under the instructions, be given for the through mail. The contract then made with the postmasters must have been, that the steamboat men were not to be paid for the through mail, but were to carry the entire mail for the sums paid for the letters delivered and distributed at the offices to which they were carried; and that the steamboat men understood the contract to be this, appears from their own conduct. They carried the mail up to the year 1853, and regularly received their payments from the postmasters, according to the instructions of the Postmaster General. They never complained to the Postmaster General that they did not receive pay according to the contract during its continuance. They kept no accounts of the through mail carried by them—never weighed it, or took any of the steps to show what service they were rendering, as they undoubtedly would have done if they had considered pay due to them for this service. Their whole conduct shows that, during the continuance of this service, they considered they were not entitled to pay for the through mail.

That this whole claim is an after-thought, appears from several circumstances. The account presented by them charges the following sums:

For mail carried by the Arrow from Sandusky to Detroit,	
March the 1st to December 1, 1849	$3,000 00
March the 1st to December 1, 1850	3,000 00
	6,000 00

The postmaster at Sandusky says, in his letter of May 17, 1851, that when he came into office (March 28, 1849,) there was no through mail passing through his office by steamboats, until the completion of

the Mad River and Lake Erie railroad; and then a through mail, labelled Cincinnati and Columbus, came. Judging from the count in his office, he put a low estimate on that mail. In the second and third quarters of 1850, the great southern mails came to his office. Estimating as he had done, he had not funds sufficient to pay; he wrote for funds and received a draft the 2d of December, and paid the captains of the steamboats the amounts due them for transporting mails. It appears, then, that the claim for through mails at Sandusky for 1849 and 1850 must have been small and was paid. Now it is, by this after-thought, $6,000, unpaid.

From the report of Mr. Dundas, it appears no application for payment of this claim was made until 1854, and all the certificates and affidavits to sustain it are dated 1854. But this claim would seem to have originated in the idea that similar claims have been paid. Grant it, for sake of argument, and what then? In this court the claimant must recover on the law and evidence of his own case, and not on the law and evidence of another man's case. This court cannot permit an inquiry into the conduct of the Postmaster General in any other case, for the purpose of raising the argument *ad hominem*—that man's case is precisely like my case, and he has been paid; I must therefore be paid, or the government is partial. We must presume the payment made in other cases was right, (as the fact doubtless is,) under the circumstances and contracts of those cases. But the United States and the parties to those cases are not to be called before this court, at the instance of the complainants in this case, and re-try all the circumstances in the other cases, to see whether the payments there were right or wrong. It is, to the present claimants, immaterial whether the money paid to others was rightfully or wrongfully paid. If they recover, it must be on the law and facts of their own case.

DAN'L RATCLIFFE,
Assistant Solicitor of Court of Claims.

IN THE COURT OF CLAIMS.

ARTHUR EDWARDS, JOHN OWEN, and IRA DAVIS, *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

The petition alleges that from 1849 to 1853 the claimants were employed by the persons having in charge the United States mails, to transport the mails to and from various ports on Lake Erie, in steamboats, as hereinafter mentioned; that, though there was no specific contract on the subject, it was understood that the claimants should receive a reasonable compensation for the service; that the claimants accordingly transported both the local and through mails in their steamboats, daily, as follows: Between Sandusky city and Detroit for certain specified periods in the years 1849, 1850, 1851, 1852, and 1853; between Cleveland and Detroit for certain specified periods in the years 1850, 1851, and 1852; and between Toledo and Detroit for certain specified periods in the years 1851 and 1853; that

the claimants have been paid for the said transportation of the local mails, but that the Postmaster General has refused to allow them compensation for carrying the through mails as aforesaid; that those through mails were transported at the request of the agents of the government; and that the claimants are entitled to be paid for such service the sum of fifty thousand dollars.

The documentary evidence is substantially as follows:

By an order of the Postmaster General of the 21st of March, 1849, the postmasters at Cleveland, Sandusky, Toledo, and Detroit, were instructed to make up and forward mails daily between their respective offices, in boats making the greatest expedition, at one cent each per letter and half a cent each per newspaper, to be paid at the office to which the letters and newspapers were delivered.

On the 6th of May, 1851, the First Assistant Postmaster General wrote to the postmasters at Toledo, Sandusky, and Cleveland, requiring them to report if they were or had been paying captains of steamboats on Lake Erie for letters, packages, and newspapers, made up as through mails, as well as for letters, &c., sent to their offices for delivery and distribution; and that if they had been or were then paying for through mails, they were requested to state under what instructions they did so; and, in making their report for 1849 and 1850, to state whether the captains of the boats were paid for through matter; and if so, how did they (the postmasters) go into the count.

To the letter just mentioned, the postmasters at Toledo and Cleveland answered that they had only paid for letters, packets, and newspapers sent to their offices for delivery and distribution. The postmaster at Sandusky answered that he had paid for through mails; but he does not state how much he had paid, nor does he refer to any instructions authorizing such payment.

Under an order of the Postmaster General of the 7th of June, 1851, the postmasters at Sandusky and Toledo were instructed that, under the order of the 21st of March, 1849, they would pay the one cent on letters and half a cent on papers, for such letters and papers as were for delivery at their offices only, and one cent for each package of letters for other offices, in respect to which their offices were the proper separating offices. And, at the same time, the postmaster at Cleveland was instructed that, as a contract for carrying the mail between his office and Buffalo, New York, had been made, the order of the 21st of March, 1849, was rescinded, except in cases of boats delivering mails from Detroit and Toledo; the boat so delivering to be paid for no through matter.

Also, on the 7th of June, 1851, the First Assistant Postmaster General instructed the postmaster at Cleveland that, under the order of the 21st of March, 1849, he would thereafter pay the boats conveying the mails from Detroit, and all other points, except from offices where there was a contract existing for the service, one cent for each letter and half a cent for each newspaper, which were for delivery at his office only; and that he would also pay one cent for each package of letters, and one-half cent for every package or bundle of newspapers for other offices—that is, such offices for which the matter is separated and assorted at his office.

There are several depositions taken, which are substantially as follows:

L. W. Beebe. He was deputy mail agent and messenger of the Post Office Department at Detroit from 1849 to 1855, and attended to the receipt and delivery of the mails. He separated the local mails directed to the Detroit post office from the through mails destined to points beyond Detroit, delivering such local mails to the Detroit post office, and sending the through mails on by cars and boats towards their destination. The through mail was, on an average, five or six times larger than the local mail.

The Southerner commenced running in the fall of 1849, and continued running until the close of navigation, between Detroit and Cleveland. She commenced running again in the spring of 1850 with the Baltimore, the two boats making daily trips between Detroit and Cleveland. They were both owned by Arthur Edwards, and carried the mail daily. In 1851, upon the opening of navigation, the Southerner commenced running on the same route in connexion with the St. Louis, going down one day and back the next. The St. Louis was owned by Captain Ward, and the Southerner by Arthur Edwards.

On the Sandusky and Detroit route, the Arrow, owned by Arthur Edwards, made daily trips in 1849, 1850, 1851, 1852, and part of 1853, when the Bay City took her place.

On the Toledo and Detroit route, the John Owen ran in the fore part of 1849, the whole of 1850, 1851, and 1852, and part of 1853, when her place was taken by the Arrow. During this time she carried the mails every other day, and was owned by Arthur Edwards. The boats on the Toledo line did not carry the mails all this time, but only during a portion of the years above mentioned. He was not positive as to the time.

A. C. Harris. From July, 1850, to March, 1853, he was a special agent of the Post Office Department, and during that period passed very often over the routes from Cleveland to Detroit, Sandusky to Detroit, and Toledo to Detroit, by steamboat. He thinks that the local mail was, on an average, not to exceed one-fifth of the through mail, and very often not more than one-eighth. The local mail is that which is destined to the post office at the end of the route, to be opened there. The through mail is that which is destined to points beyond such office.

On the Cleveland and Detroit route, the mails were carried by the steamers Southerner and Baltimore during 1850 and 1851; by the steamers Arrow and Bay City, on the Sandusky and Detroit route, during his agency; between Toledo and Detroit, by the Arrow and Owen. The mails were put on the boats running over said routes by directions of the postmasters generally, and sometimes by the witness' direction. The captains often objected to receiving the great through mail, saying that the postmasters refused to pay them anything, except for the local mails; and as (they) got nothing for it they would not carry it, unless the witness would undertake to see them paid. He requested them to take the mail aboard, and assured them that they would be paid for the service; and in so doing he

states that he acted under the directions of the Post Office Department. It often occurred that the mail could not be got to the boat on the arrival of the cars by the time of leaving. In such cases the witness often requested the captains to delay until the mails could be put aboard, and they did so, waiting sometimes from a half an hour to an hour and a half.

D. D. Beebe. He was clerk in the Cleveland post office in 1852, and thinks that the through mail carried on the steamers in that year was, at least, twenty times larger than the local mail.

James Welch. He was a clerk in the Cleveland post office in 1851 and 1852. The mails in those years were carried between Cleveland and Detroit by steamboats daily. The mail going east during those years consisted mainly of the through mails destined for Pittsburg, Baltimore, Washington, Columbus, and Cincinnati; and going west, of matter from those and other offices going to Chicago and other offices west; together with the local mail between Detroit and Cleveland post offices. He thinks it safe to say that the through mail carried over this route was, on an average, ten times as large as the local mail. He was in the habit of handling the mail in delivering it to the mail carrier, and in separating it on its arrival for opening the local mail for delivery.

L. A. Pierce. He was, in 1850 and 1851, master of the steamboat Southerner, running between Cleveland and Detroit. He ran the boat from the 17th of March, 1850, till the 21st of November following; and from the 19th of March, 1851, to the 20th of November following, carrying daily the through and local mails the two seasons. The local mail was made up here (Cleveland) and destined for Detroit, and *vice versa*. The through mail was destined for points beyond Detroit on one side, and Cleveland on the other. He thinks the through mail would average from six to eight times as much as the local mail; and that there were from eight to ten bags of through mail per day. Of the local mail, there was one bag of letters and one bag of papers. He received for carrying the mail about two hundred dollars for each season, and that for the local mail only.

P. Farley. During the seasons of navigation in 1850 and 1851 he carried the mail from the boats to the post office, and from the post office to the boats, daily, and thinks the mail was carried in those years on the steamboats Southerner and Baltimore, from Cleveland to Detroit, and from Detroit to Cleveland. He thinks that the local mail was not more than one-fourth as large as the through mail. The local mail was that which stopped at Cleveland and Detroit; the through mail was that which was destined for points beyond Cleveland on one side, and beyond Detroit on the other.

J. Nelson. During the lake navigation in 1851 and 1853 he was mail carrier at Toledo, and carried the mails from the cars and steamboats to the post office, and from the post office to the cars and boats. In 1851, the line between Toledo and Detroit was formed by the John Owen and the John Hallister, and, in 1853, by the Arrow and the Dart. The boats usually made the trip to Detroit in one day and back the next; and for a short time in 1853 they made the trip both

ways in one day. He thinks that the through mail in those years, when carried on the boats, was four times as large as the local.

T. F. Brodhead. He was postmaster at Detroit from the 1st of July, 1853, to the time of taking his deposition. The steamer Bay City carried the mail between Detroit and Sandusky from said 1st of July to the 31st of December following. The mail from Toledo to Detroit was carried, for the same time, by the steamer Arrow, and it was understood that, at that time, those boats were owned by the claimants. For the transportation of the local mail on those steamers he usually paid the captains of the boats. The amount paid for said time was $354 88. Between Sandusky and Detroit, the through and local mails were about the same. Between Detroit and Cleveland, the through mail, or mail for points beyond Cleveland, was four times greater than the local mail. Between Cleveland and Detroit, the through mail was one-fourth as large as the local mail. The mail service of said boats was satisfactorily performed. He paid for delivery of local mail at Detroit post office at the rate of one cent per letter and one-half cent for each newspaper. He also paid for packages received and going beyond his office one cent for each package, amounting to fifteen dollars and fifty-three cents for the two quarters ending the 31st of December, 1853.

S. F. Atwood. He was master of the steamboat Arrow in 1849, 1850, 1851, and 1852, and was master of the Bay City in 1853, owned by the claimants as managing owners. Between Detroit and Sandusky, and occasionally between Detroit and Cleveland, the Arrow generally ran; and the Bay City did the same in 1853. Before navigation opened to Buffalo, the witness used to run, as far as the ice would permit, beyond Cleveland. Whilst master of said boats he carried the through and local mails. In said years, except 1853, he carried the through eastern mail before navigation opened to Buffalo, and generally made from three to seven trips, each time carrying the mail both ways, for which no compensation was received, except for delivery of the local mail at Detroit, and sometimes at Cleveland. The largest through mail, for which he received no compensation, was eighty full sized leather and canvas bags. The through mail, as near as he could estimate it, was three-fourths or four-fifths of the mail carried. The claimants were the managing owners of the boats Arrow and Bay City. He supposed that the carrying of the through mail on the Southern Michigan railroad commenced in 1853, as there was then a diminution of the through mail by steamboats. He often asked compensation for carrying the through mail, but never received it. The claimants did not receive it, for the captains of the boats only were authorized to receive and receipt for it.

L. W. Martin. He was clerk and steward of the steamboat Southerner in 1850, 1851, and 1852. That boat ran between Detroit and Cleveland in 1850 and 1851, and between Cleveland and Toledo in 1852. Whilst he was on that boat, she carried the through and local mails. The through mail was four or five times larger than the local mail. The boat carried the through mail, for which no compensation was received, to points below Cleveland before navigation was open to Buffalo. She made from three to six trips to such points. He

said he could not state particularly the average amount of through mail carried generally, but one mail numbered one hundred and twenty-eight bags.

A. S. Williams. He was postmaster at Detroit in April, 1849, and until July 1, 1853. The Arrow, Bay City, Southerner, and the other boats mentioned in the claimants' petition, carried the mail from Detroit to the points named in the petition. They carried the through as well as the local mails. In May and September, 1849, he wrote to the Post Office Department at Washington, advising it of claims made by steamboat captains, generally for compensation for carrying the through mails, expressing the opinion that the quantity of through mail was more than double that of the local mail delivered for distribution there, and saying that he thought his estimate would fall far short of the facts. The through mail increased very much from that time till the fall of 1852. He thought the through mail in 1850, 1851, and 1852, was from three to four times greater than the local mail. The through mail embraced everything west of that State. He never paid anything for the transportation of the through mail by packet. He acted under the instructions in the office to his predecessor, dated March 26, 1849.

G. D. Baptist. In 1849, 1851, and 1852, he was on the steamboats Arrow and Southerner together at different times. He was on the Southerner in 1849 and 1852, and on the Baltimore in 1851. Part of his duty was to take care of the mail bags on those boats. The through mail, while he was on the boats, was, at a low estimate, five times larger than the local mail. They once carried a mail, taken on at Erie and left at Toledo, which they estimated at about eight tons.

Lewis Allen. He was assistant postmaster at Detroit from the 1st of May, 1849, to the 1st of October, 1853. From his knowledge there of mails for Chicago and points west, he thought the through mails, brought by the steamboats, were three times larger than the local mail. The steamboats frequently brought through mails as well as local mails.

Daniel P. Bushnell. He was collector of customs at Detroit. Arthur Edwards had been managing owner of the Southerner from 1849. The Bay City was under the managing ownership of Ira Davis and John Owen, or Owen and Davis, from 1852. The Arrow had been in the name of Owen and Davis from 1850 to 1853, inclusive. The Baltimore was registered in 1851 in the name of Howard and Bronson. The John Owen was registered in 1845, and owned by Arthur Edwards and Ira Davis from 1845 to 1853, inclusive. The Southerner ran between Detroit and Cleveland; the Arrow between Detroit and Sandusky; the Baltimore between Detroit and Cleveland; the Bay City between Detroit and Sandusky; the John Owen ran between Detroit and Toledo in 1849, 1850, 1851, 1852, and 1853.

L. W. Martin. The claimants had the control of the steamers Baltimore, Arrow, Southerner, John Owen, and Bay City, from 1849 and 1853, inclusive, during such time as said boats were running, and were entitled to receive compensation for such service. The John Owen was owned by Edwards and Davis, and ran between Detroit

and Toledo from the spring of 1849 to the fall of 1852, inclusive. The Southerner was owned and controlled by Arthur Edwards, and ran from Detroit and Buffalo, touching at intermediate ports; from Detroit to Cleveland in 1850 and 1851; between Cleveland and Toledo in 1852. The Baltimore was chartered by Edwards and Davis from the owners for the season of 1851, and ran between Detroit and Cleveland. The Arrow was owned by Edwards and Davis from 1849 to 1853, inclusive, and ran from 1849 to 1852 between Detroit and Sandusky, and, in 1853, between Detroit and Toledo. The Bay City was owned by Davis and Owen and Ward (Davis and Owen being the managing owners) in 1853, and ran between Detroit and Sandusky. The said boats carried the through and local mails between the different ports stated in said years during the season of navigation.

H. G. Vorce. He was captain of the Baltimore, running between Detroit and Cleveland during the navigation season of 1851, and carried the mail on that boat during that year on every trip. When there were six or eight bags of mail, he thought that not more than two of them would be the local mail.

S. F. Atwood. The Arrow and Bay City, mentioned in his previous deposition, commenced running as soon as the ice would permit in the spring, generally about the 20th of March, and ran till the ice stopped them in the fall, which was, on the average, about the 20th of December. They made daily trips over the route (between Sandusky and Detroit) twice each day down, and back every day, except Sunday, and except, also, from four to nine trips early in the spring, when they ran to Erie and Buffalo. The mail was carried every day twice over the route, or daily both ways during the season of navigation of those years, (1849 to 1853.)

H. G. Vorce. The mails, mentioned in his previous deposition, going west, consisted of those destined to Detroit, Chicago, and points west; and the mails going east generally consisted of matter marked for Cleveland, Columbus, Pittsburg, Baltimore, and other points south and east. The mails destined to and marked for Detroit and Cleveland, at each end of the route, he understood as local mails, and those going to points beyond those offices as through mails. In speaking of the bags, in his previous deposition, he meant to express the proportion of the local and through mails. The through mail was four times larger than the local mail.

A. S. Johnson. In 1851 he was clerk of the Baltimore. She carried the mail between Detroit and Cleveland daily, commencing at the opening of navigation in the spring, and running till the close of navigation in the fall. He had the general supervision of the mail when brought aboard, and saw it locked up, and, at the end of the route, properly delivered to the agent, who carried it to the post office. His recollection of it was, that the through mails destined to points beyond Detroit going west, and beyond Cleveland going east and south, were eight or ten times as much in bulk as the local.

Daniel M. Haskell. He was postmaster at Cleveland, Ohio, from May, 1849, to some time in April, 1853, and attended personally to the duties of the office during said time. The mail was carried between his office and Detroit by the steamers Baltimore and South-

erner during 1850, and by the Southerner and St. Louis during 1851. During those years the mail was carried daily, Sundays excepted, both ways. The mail going west consisted of the local mail between his office and Detroit, and the great southern mail from Baltimore, Washington, Pittsburg, and other southern towns, destined to Detroit, Chicago, and other points west. Going east, it consisted of the mail from Chicago, Milwaukie, and other western towns, (also the local mail from Detroit,) destined to Pittsburg, Baltimore, Washington, and the country south and east of Cleveland. The local mail was but a small proportion of the whole mail carried. From his recollection of it, he should say it was not more than one-tenth of the whole bulk of mail passing over this route. His attention was frequently called to it by the captains of the boats calling on him for pay for the through mail, insisting that it was eight or ten times as much as what they got pay for. He did not pay them for carrying the through mail or any part of it. He paid for carrying the local mail between Cleveland and Detroit, at the rate of one cent for letters and half a cent for papers delivered at his office, to the captains of the boats so bringing such mails. He had no means of estimating the through mail otherwise than as the local was estimated, at one cent per letter and half a cent for a newspaper, which he thinks was a reasonable price; and he thinks it was worth the same price to carry the through mail as the local, according to its relative proportion. The boats above mentioned formed a line between Detroit and Cleveland, running in connexion with the railroads at those points, being the only boats on that line during said two years. He sent both the local and through mails over that route by said boats by the instructions of the Post Office Department.

The facts and the law of this case are, in our opinion, as follows:

On the 21st of March, 1849, the Postmaster General instructed the postmasters at the places mentioned in the petition "to make up and forward mails daily between their respective offices in boats," at one cent a letter and half a cent a newspaper, payable where the letters and papers were delivered; and on the 7th of June, 1851, he instructed the postmasters at Sandusky and Toledo to pay the one cent on letters and half cent on papers which were for delivery at their offices only, and one cent for each package of letters for other offices, in respect to which their offices were the proper separating offices. In consequence of those instructions, the claimants carried both the through and local mails in steamboats over the routes and during the periods mentioned in the petition, the through mails being much larger than the local mails. A report from the Post Office Department shows that the claimants were paid by the postmasters at Detroit, Cleveland, Sandusky, Toledo, and Monroe, $10,544 95 for mail service in the years mentioned in the petition, under said instructions of March 21, 1849, and June 7, 1851, allowing one cent for each letter and half a cent for each newspaper. The claimants applied, in 1854, to the Post Office Department for an additional compensation of $25,180, but the application was refused. They have now applied to this court for additional compensation, and have increased the demand so as to make it $50,000.

We have no doubt but that the promises made by the Postmaster General by the said orders of 1849 and 1851, for carrying the mails, whether through or local, or both, have been complied with. For the mails to be sent by the boats, and which were so sent, under said orders, the exact price was fixed by those orders, and the same has been regularly paid. Now, did the Postmaster General make any other contract with the claimants, or authorize any other to be made with them than those expressed in said orders? It is not proved to our satisfaction that he did. It is true, there is a witness, Mr. Harris, a special mail agent, who says that the steamboat captains often objected to receive the through mails, saying that the postmasters refused to pay them except for the local mail; that he requested them to take the mail, assuring them that they would be paid; and he says that, in doing so, he acted under the directions of the Post Office Department. The witness does not state the time when this conversation with the captains took place, nor does he set out the directions under which he says he acted. Neither does he say that the directions were given by the Postmaster General; he only says that they were of the Post Office Department. In all this there is too much uncertainty to satisfy us that the Postmaster General gave to the captains, through Mr. Harris, the assurance in question.

This assurance, given by Mr. Harris, was for a *quantum meruit;* that is, not for any particular price, but for what the service of carrying the through mails should be worth. The claimants have referred to no act of Congress that contemplates the giving of such an assurance by the Postmaster General. The 5th section of the act of March 3, 1825, authorizes the Postmaster General to have the mail carried in any steamboat * * * on such terms and conditions as shall be considered expedient, provided that he does not pay more than three cents for each letter, and more than one-half cent for each newspaper, conveyed in such mail.—(Stat. at Large, 103.) The 14th section of the act of March 3, 1845, authorizes the Postmaster General to contract with the owners or commanders of any steamboat * * * * for the transportation of the mail for any length of time or number of trips, less than the time for which contracts for transporting the mail of the United States were then usually made under existing laws, and without the previous advertisements then required before entering into such contracts, whenever, in his opinion, the public interest and convenience would be promoted thereby; provided that the price to be paid for such service should in no case be greater than the average rate paid for such service under the last preceding or then existing regular contract for transporting the mail upon the route he may so for a less time contract for the transportation of the mail upon.—(5 Stat. at Large, 737.) Those provisions have reference to contracts for a specific price, and not to general promises for what the service might be worth.

We have a report relative to this claim, furnished by Mr. Dundas, Second Assistant Postmaster General, in whose office the contracts and directions of the Postmaster General for the transportation of the mails are entered; and we think that report of itself shows that the

Postmaster General gave no other directions respecting said transportation of the mails than the orders aforesaid of 1849 and 1851.

We cannot, therefore, say that Mr. Harris' testimony shows any engagement by the Postmaster General upon which the claimants can found this additional claim of $50,000.

The said report of the Second Assistant Postmaster General, among other things, says:

"During the years 1849, 1850, and 1851, there were no regular steamboat contracts between Detroit, Cleveland, Toledo, and Sandusky. There were daily land routes which were intended for the great mails, though they appear to have been irregular, and not at all times sufficient for the service. A regular boat line commenced May 19, 1852, between Cleveland and Buffalo, and Buffalo and Detroit, (north shore,) which, no doubt, conveyed the through mails. The boats of Captain Edwards were only employed in common with many others, not under contract, for auxiliary service, under the general instructions to postmasters to employ them and pay one cent a letter and half a cent a newspaper, estimated on what are called local mails; which pay was to be in full for all mails, as well through as local. The whole number of boats thus employed during the period embraced in the present claim appears to have been eighty-eight, and the aggregate amount paid them $44,605 21, (including Captain Edwards' boats.) These all conveyed through mails, it is presumed, and all upon the same terms, and compensation they have received must have been regarded by the department in full for all their services."

The Postmaster General, Mr. Campbell, in a communication of the 3d of November, 1856, to the Assistant Solicitor of this court, says:

"In answer to your inquiry as to the practice of the department relative to payments for conveying mails on the lakes, I have to state that, except where regular contracts exist, the pay is adjusted according to the number of letters and papers destined for the port of delivery, constituting the *local mails*, without reference to through mails conveyed at the same time.

"In some cases one cent has been allowed on each *package* of letters *not* for delivery, forming part of the *through* mails; but with this exception, the parties always understood that the amount allowed for the local mails was to be in full for the *whole* service."

The employment of the claimants for carrying the mails, as aforesaid, was under the said orders of the Postmaster General of the 21st of March, 1849, and of the 7th of June, 1851; and for the services now sued for, which were performed under that employment, the claimants can be legally entitled to no other compensation than that which those orders authorized. That compensation has been paid to them by the government. They, no doubt, carried in their boats the large through mails, as well as the local mails, during the time the latter were carried by them as aforesaid. But for any compensation for their services beyond what they have received, they must depend upon the discretion of Congress.

Our opinion is, that the claimants have no legal cause of action.

35TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 213.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

JOSEPH RATCLIFF *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Joseph Ratcliff's deposition, transmitted to the House of Representatives.
3. United States Solicitor's brief.
4. Opinion of the Court adverse to the claim.
5. Papers committed with this case, withdrawn from the files of the House of Representatives by claimant and filed in this case, are now returned to that House in a separate envelope.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this first day of April, A. D. 1858. [L. S.]

SAMUEL H. HUNTINGTON.
Chief Clerk Court of Claims.

To the honorable Court of Claims of the United States, sitting in Washington:

Your petitioner, Joseph Ratcliff, of Georgetown, D. C., would respectfully represent, that some time in the spring of the year 1814 he entered into a contract with Captain William Doughty, naval constructor, for the supply of a large quantity of fine timber for the use of the government at the navy yard, Washington city. That the price agreed to be paid for said timber was thirty cents per cubic foot. That in pursuance of said contract, and in accordance with its terms and specifications, he proceeded to purchase, fell, hew, and prepare for delivery, a large number of valuable logs, averaging in size, as near as can be estimated, about one hundred cubic feet to each log. That in the month of August of said year, a few days before the burning

of Washington by the British forces, in strict pursuance of his contract, he had caused to be carried to the said navy yard a raft of thirty-six of said logs. But your petitioner alleges that the business of the navy yard was at that time entirely suspended on account of the approach of the enemy, and the officers were absent on military duty. He was ready and anxious to have the said timber inspected, measured, and received, as the terms of the contract required; but as the officers were not present to receive it, the same was made fast at the navy yard, and was burnt in the subsequent conflagration.

Your petitioner further states that, afterwards, the whole navy yard having been destroyed, together with the vessels then and there being built, for which chiefly the timber was required, he was informed by the said Captain William Doughty that no more timber would be received under the contract aforesaid; and your petitioner was instructed not to make any further deliveries. At this time, in addition to the raft aforesaid, your petitioner had one hundred and fifty other logs prepared and ready to be delivered in pursuance of the said contract, all of which were thrown upon his hands and became an utter loss on account of the rescinding of the said contract. There being no other market for such timber, the same was necessarily left on the shores of the creeks and rivers, and either went to decay, or was swept away by the floods.

Your petitioner further states that the said contract was in writing; but the same cannot now be produced, because it has been lost or destroyed. The copy retained by Captain Doughty was burnt at the navy yard; and that which your petitioner held was placed in the hands of the honorable Alfred H. Powell, a member of the 18th Congress, to be used in that Congress in applying for relief; but, although diligent search has been made, your petitioner has never been able to find the said contract.

The material terms of the contract, however, were as stated above, viz: your petitioner agreed to deliver a large quantity of sound pine timber, of proper size and quality for building purposes, which was to be inspected, measured, and received when presented at the navy yard; and the government agreed to pay for the same at the rate of 30 cents per cubic foot. Your petitioner avers that his said contract provided for the delivery of a much larger quantity than the hundred and eighty-six logs aforesaid, together with all that had been previously delivered; and that the said logs were all of good sound timber of the proper size and quality, and ought to have been received under said contract.

The value of the said timber was as follows:

36 logs, of 100 cubic feet each, delivered at the navy yard, at 30 cents per foot.....	$1,080
150 logs, same size, at 30 cents, less 3 cents allowed for cost of cartage.....	4,550
	5,630

Your petitioner insists that he is entitled to the full compensation herein claimed for the refusal on the part of the government to carry out the said contract. The destruction of the navy yard by the enemy did not release the government from its contracts, nor authorize it to annul them.

Your petitioner has repeatedly applied to Congress for relief, and the following is a statement of the reports which have been made and the action taken by the two houses:

At the 1st session of the 18th Congress the Committee of Claims of the House of Representatives made an adverse report, which was laid on the table. The report seems to have been verbal, not written.

1st session, 23d Congress, same committee made report No. 521; laid on the table.

2d session, 24th Congress, same committee made a favorable report, No. 266, accompanied by bill 954, which was never acted on.

2d session, 25th Congress, report No. 75, bill 87, passed by the House and indefinitely postponed by the Senate.

1st session, 25th Congress, Committee on Naval Affairs, House of Representatives, made report No. 440, with bill No. 370, which was never acted on.

In the Senate, in addition to the action already stated, at the 1st session of the 26th Congress, report No. 180, adverse, was made and agreed to.

1st session, 29th Congress, adverse report, verbal; concurred in, reconsidered, finally laid on the table.

This claim was at other times before the two houses of Congress; but, having received no attention, the petitioner presumes it is unnecessary to refer to the mere presentation of his memorial.

Your petitioner further states that he has voluntarily assigned this claim to his son-in-law, William H. Edes, and his grandson, James R. Dunn, for the consideration of natural affection; and he prays the Court to make its decree in favor of the said Edes and Dunn. Your petitioner is now very old, and he desires his children and grandchildren to have the benefit of this demand against the government, which, though long delayed and often denied, is just and righteous, and ought to be paid. No other person, except those named, has any interest therein.

FRED. P. STANTON,
Attorney for the Claimant.
JOSEPH RATCLIFF.

DISTRICT OF COLUMBIA, *County of Washington:*

Before me, Henry Reaver, a justice of the peace in and for the District and county aforesaid, personally appeared Joseph Ratcliff, the foregoing petitioner, and made oath that the facts stated in his petition are true, to the best of his knowledge and belief.

Sworn to and subscribed this, the 3d day of January, 1856.

HENRY REAVER,
Justice of the Peace.

IN THE COURT OF CLAIMS.

ON THE PETITION OF JOSEPH RATCLIFF.

Brief of the Solicitor of the United States.

This is a claim for thirty-six logs of pine timber, alleged to have been delivered at the Washington navy yard in August, 1814, under contract with Mr. Doughty, naval constructor, at 30 cents per cubic foot, each log alleged to contain 100 cubic feet = $1,082; also for 150 logs not delivered in consequence of the refusal of Doughty to receive the same.

The only evidence on the last point is Mr. Ratcliff's own unsupported statement, which, besides being inadmissible, is discredited by the fact that Doughty, his own witness on the other items, is not questioned at all as to this material fact of his refusal to receive any more timber.

As respects the first item, see the report of Mr. Whittlesey, and also of Governor Hubbard, H. Rep., 1st sess. 23d Cong., vol. 4, No. 421; Senate R. 180, vol. 4, 1st sess. 26th Cong.

This claim, made by a gentleman who resided in Georgetown at the time it accrued, and ever since, was not presented till 1824, ten years after the date at which it is alleged to have accrued.

There have been three sets of depositions and affidavits filed in its support, the first of which were withdrawn in 1827, after the first report on the case by the Committee of Claims, and before filing the second petition in 1834.—(See Rep. No. 521, 1st sess. 23d Cong.)

Neale, alone, testifies to the delivery of the logs referred to in the first item.

His testimony as to the time, which is a material point in the case, owing to the fact that a payment was made in the latter part of the month preceding that in which this delivery is alleged to have been made, becomes more positive as the date of his testimony recedes from the date of the transaction; and although it is true that the circumstance of the destruction of the buildings at the navy yard might well serve to fix the date of a contemporaneous transaction, it is not pretended that the delivery was on the same day, but only within a few days of that event. The witness and petitioner first stated it as having happened six or eight days before; now it is but three or four days before.

No claim having been made at the time, and nothing done, therefore, to fix the attention of the witness to the circumstance that this was a distinct delivery from that made in the last of the preceding month, and there being no memorandum whatever made, and nothing to corroborate the statement that there was a delivery in the month of August, the probability on the face of the transaction is, that the witness refers to the delivery made 27th July, which was paid for.

And this is rendered more probable still when his testimony is compared with that of the other witnesses. His statement, for example, that there was no one there to receive the raft, is rendered improbable by the testimony of Capt. Tingey, who says in 1824, (Rep. 180, p. 3,)

"that the usual number of persons continued to be employed in the yard until the day of the fire, except, indeed, a part of the mechanics, who were ordered away on militia duty, perhaps two days prior thereto, as reference to my diurnal memoranda taken at the time will show.

"It would appear questionable also, by what authority Mr. Neale fixed the raft to the yard or to the dock without application to me, or some other officer of the yard, who were all daily present in the yard the whole of that month, until after executing the order of the Secretary of the navy for setting it on fire, nor was I, for some weeks before and after that event, or during the time of burning, ever absent 24 hours from it at one time." Carberry, one of the witnesses for claimant, who says he was the inspector of this timber at the yard, also says: "although absent himself for six or eight days before the 24th August, he supposes there were officers at the yard who would have measured the timber if they had been applied to."

He also contradicts Neale as to the length of the logs, and says *he thinks* "36 stocks could not be obtained on the Potomac that would average more than about 60 cubic feet." When it is considered that this statement is found in the examination of one of the claimant's witnesses, the court must be satisfied that Neale is unreliable, at least as to the dimensions of the logs, and, therefore, as to the amount delivered. Having thus almost doubled the amount of the item by exaggeration as to the size of the logs, it is demonstrated that it would be unsafe to confide in any unsupported statement made by him. But it seems to me that the unaccounted for fact alone that no demand was made for payment of this item in 1814, or for ten years afterwards, is conclusive against the validity of the demand.

The explanation of this claim is found in the testimony of Milstead, taken on the 12th day of July, 1834. He says, "that some short time before the navy yard was burned at Washington, deponent was draughted to go to Richmond, and went as far as Fredericksburg and returned from thence. That when deponent went away, he had collected a large number of square stocks, the number not recollected, which were hauled to the landing at Quantico creek; that in the meantime, after the burning of the navy yard, and *before the fleet of the British came up the river, there came a high freshet on the river and creek, and swept off the whole of said timber*, which deponent believes was totally lost to Mr. Ratcliff."

The fleet came up the Potomac at the same time that the British army marched on Washington; and as the timber collected by Ratcliff was swept off prior thereto, according to this witness, it is probable that Ratcliff's loss was entirely due to the freshet. And this is confirmed by the delay on the part of those presenting the claim, which, if valid at all, was one which the Navy Department was competent to pay, without any action by Congress.

The circumstance of the absence of the inspector was no impediment at all to the presentation of the claim and its payment, if satisfactory proof had been made of the delivery. No presentation being made then, or for ten years, it is evidently an after-thought to make the government pay for the misfortune of the claimant occasioned by the freshet.

M. BLAIR.

IN THE COURT OF CLAIMS.

JOSEPH RATCLIFF *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court.

The petitioner states that in the spring, A. D. 1814, he entered into a contract with William Doughty, naval constructor, for the supply of a large quantity of timber for the use of the government at the navy yard in Washington city, at thirty cents per cubic foot; that he prepared a large number of logs, averaging in size "about one hundred cubic feet to each log;" that, a few days before the burning of Washington by the British, he caused to be carried to said navy yard a raft of thirty-six logs; that the business of the navy yard was at that time entirely suspended on account of the approach of the enemy, and the officers were absent on military duty; and that, the officers not being present to receive it, the raft was made fast at the navy yard, and burnt in the subsequent conflagration.

The petitioner further states that William Doughty afterwards informed him that no more timber would be received under his contract; that he had one hundred and fifty other logs then ready for delivery; and that there being no other market for such timber, the same was necessarily left on the shores of the creeks and rivers, and either went to decay, or was swept away by the floods.

The petitioner further states that the contract was in writing, but has been lost or destroyed; and that, by its terms, he agreed to deliver a large quantity of sound pine timber of proper size and quality for building purposes, which was to be inspected, measured, and received when presented at the navy yard; and the government agreed to pay him therefor at the rate of thirty cents per cubic foot.

The petitioner now claims as follows:

36 logs, of 100 cubic feet each, delivered at the navy yard, at 30 cents per foot	$1,082 00
150 logs, same size, at 30 cents, less 3 cents allowed for costs of cartage	4,550 00
Total	5,630 00

The petitioner has repeatedly applied to Congress for relief. He states in his petition the action which has been had thereon in Congress. He has made a voluntary assignment of his claim to his son-in-law, William H. Edes, and his grandson, James R. Dunn.

The petitioner does not pretend that he ever made application to the Navy Department for the settlement of his claim. He did not present it to Congress till the 1st session of the 18th Congress. On the 25th day of February, A. D. 1824, the Committee of Claims in the House of Representatives made a report against the claim. The original papers then belonging to the case were withdrawn on the 11th day of January, A. D. 1827. It appears from the report previously

made, that the petitioner stated that his loss took place six or eight days before the yard was burnt. The testimony of John Neale at that time was, that he carried the raft of timber, consisting of 36 logs, to the navy yard about six days before the yard was burnt.—(See Rep. No. 521, House of Representatives, 23d Congress, 1st session, and the letter of Commodore Tingey to Charles Hay, esq., dated February 4, A. D. 1824, a copy of which is annexed to Rep. 180, Senate, 26th Congress, 1st session.)

Nearly ten years having elapsed from the alleged origin of the petitioner's claim till he first presented it to Congress, he permitted nearly the same period to pass away before he again presented it. In the meantime, as above stated, the original papers had been withdrawn. His second petition was also supported by the testimony of John Neale, taken on the 20th day of February, A. D. 1834. He then stated that he towed up the thirty-six stocks of timber, for which compensation was claimed, *three* or *four* days before the navy yard was burnt. He speaks positively "as to the number, from having given a previous affidavit about them." It appears, from a copy of a bill of timber certified for the use of the Committee of Claims in the House of Representatives in 1824, that the petitioner did deliver at the navy yard, on the 27th day of July, A. D. 1814, pine timber and beams, worth $949 62, which was paid at the Treasury Department. On the 10th day of June, A. D. 1834, the Committee of Claims in the House of Representatives reported against the petitioner.

Commodore Tingey, in his letter to Charles Hay, esq., already referred to, stated as follows: "In support of this claim, Mr. Ratcliff produces the testimony of John Neale, which, however correct it may be in other respects, is extremely erroneous in stating that about six days previous to the yard being burnt, on bringing said raft of timber to the yard, he could not find more than two or three men there. In reply to which, I must state that the usual number of persons continued to be employed in the yard until the day of the fire, except, indeed, a part of the mechanics, who were ordered away on militia duty, perhaps two days prior thereto, as reference to my diurnal memoranda taken at that time will evince.

"It would appear questionable by what authority Mr. Neale fixed the raft to the yard, or to the dock, without application to me or some other officer of the yard, who were all daily present in the yard the whole of that month, until after executing the order of the Secretary of the Navy for setting it on fire. Nor was I, for some weeks before and after that event, or during the time of burning, ever absent 24 hours from it at one time.

"I transmit herewith a statement of all the timber, &c., delivered here by Mr. Ratcliff during the years 1813 and 1814, and for which his accounts were regularly passed for payment."

John Neale, in his affidavit made on the 20th day of February, A. D. 1834, stated that, during part of the years 1813 and 1814, he was employed by the petitioner as captain of the schooner Polly, and was engaged in towing up timber from the creeks and shores of the Potomac river; that three or four days before the navy yard was burnt, he towed up for the petitioner a raft of thirty-six logs, averaging,

each, one hundred cubic feet, and delivered them at the navy yard; that there being no person there to receive it, he made the raft fast to the place where he did all the previous ones; and that he is positive as to the number, from having given a previous affidavit about them.

The same witness, in his affidavit made on the 15th day of February, A. D. 1837, states, in answer to interrogatories, that it was in the month of August, A. D. 1814, and three or four days before the 24th of August, A. D. 1814, when the navy yard at Washington was burnt, that he took the raft of thirty-six logs for the petitioner to the navy yard; that it was not the only raft he delivered during that month; that he had previously delivered timber for the petitioner—all of which, he understood from the petitioner, was paid for, except the last; that the raft of thirty-six logs was the last delivered by him, and the burning of the navy yard on the 24th of August, A. D. 1814, makes it the stronger on his mind; that Charles Allen, who, at the time of the affidavit, resided at Pamunkey, Maryland, "and a boy, named William Norvell, residing in Baltimore, Maryland," were with him; that he fastened the raft to three or four piles with ropes belonging to the United States, which were placed there by the officers of the navy yard "for making fastenings to secure vessels or timber from drifting;" that he did not know what became of the timber; and that he was at the yard about a month after the conflagration.

In 1837 Captain Doughty was examined before the Committee of Claims in the House of Representatives, and testified that, before and at the time the navy yard was burnt, in August, A. D. 1814, he was the constructor for the Navy Department, and contracted for timber, to be delivered at the navy yard; that he made such a contract with the petitioner; that to enable the person who delivered timber to get his pay, it was necessary to have it inspected by the inspector of the yard, and the value ascertained and certified by the witness, and also to obtain the approval of the commandant or navy agent; that on the day the yard was burnt, and for several days previously—not less than four or five, he thinks—the witness was with the army, in command of a rifle company; that he did not know whether the petitioner, or any person for him, delivered a raft of timber at the yard within from four to six days before the yard was burnt; that he did not know where James Carberry was on the day the yard was burnt, or where he was for several days previously, but he believes that he was with the witness; that "the regularity of doing business at the yard" was interrupted, he would say, a week before the burning of the yard; that the petitioner had not, to his knowledge, any contracts for the delivery of timber at the yard, except those made with the witness; and that there was, as well as his recollection served him, timber destroyed at the dock by the burning of the yard; "the timber was burnt on the surface."

James Carberry was also examined before the same committee, and testified that he was the inspector of timber at the navy yard in Washington in 1814; that it was his duty to inspect the timber delivered; that on the 24th of August, A. D. 1814, when the yard was burnt, and for six or eight days previously, he was absent from the yard, in a company commanded by Captain Doughty; that he

knew the petitioner who had delivered some timber at the yard before August, which had been inspected and paid for; that he should place confidence in the petitioner's statement, from his knowledge of him; that he knew nothing of the delivery of the raft of timber mentioned by the petitioner as having taken place a few days before the yard was burnt; that, although absent himself, yet he supposed that there were officers at the yard who would have measured the timber if they had been applied to, but of this, having been absent himself, he had no personal knowledge; that from his knowledge of the pine timber on the Potomac, he thought that thirty-six logs which would average more than sixty cubic feet, each, could not have been obtained; and that there was confusion in the yard for several days before it was burnt, as an attack was apprehended.

We remark here, that Captain Doughty, in a certificate endorsed upon the affidavit of John Neale, of the 20th of February, A. D. 1834, states, "that, for several days before the battle of Bladensburg, all the mechanics of the navy yard were upon duty with the army, and, from this circumstance, I think it quite probable that there was no person present at the yard whose duty it was to receive the timber mentioned in the within certificate." But in his examination before the Committee of Claims he does not mention the same facts. Mr. Carberry, in his examination before the committee, stated it as his impression that there were officers at the yard who would have measured the timber if they had been applied to; and Commodore Tingey stated that the usual number of persons, except the mechanics, continued to be employed at the yard until the day of the fire, "as reference to my [his] diurnal memoranda taken at that time will evince."

Joseph Ratcliff, a witness on the part of the petitioner, testified, on the 3d day of May, A. D. 1856, that he was then in the fifty-third year of his age; that in the year 1814 he lived in Washington, and was frequently at the navy yard; that about the time of the burning of the navy yard, his uncle, Joseph Ratcliff, sen'r, was engaged in delivering timber at the navy yard; that he remembers distinctly that after the conflagration his uncle came to the navy yard to look for a raft of timber which he said had been delivered at the yard prior to the burning; that he knew nothing of the delivery of the raft, except from hearsay; but he saw sticks of timber scattered over the water, charred or partially burnt, which his uncle claimed as part of the raft previously delivered, but the same could not be identified or collected.

The deposition of Joseph Ratcliff is the only one which has been regularly taken before a commissioner. The other evidence consists of *ex parte* affidavits, and the examinations of Captain Doughty and James Carberry before the Committee of Claims.

There is among the papers an affidavit of the petitioner himself, made on the 1st day of February, A. D. 1849, in which he states, that soon after the destruction at the navy yard in Washington by the British, in August, A. D. 1814, he went in person to the yard, and found the workmen engaged in arranging the rubbish, burnt timber, &c., in piles; that he there saw William Doughty, esq., with whom he had contracted to deliver timber at the yard, and told him that he (the affiant) had delivered a raft at the yard some days before;

of which, said Doughty replied, he knew nothing; that he further stated that he (the affiant) had a large quantity of timber below to be rafted up the river, and said Doughty replied, "I know no more than you what is to be the result of things. We do not want and cannot receive any more timber here," or words to the same effect; that he (the affiant) was anxious to complete the delivery of his timber according to contract, and would have done so, unless prevented by accident, but for said Doughty's declaration.

It cannot be justly pretended that there is sufficient evidence to sustain the claim for the price of the one hundred and fifty logs which, it is alleged, the petitioner was ready to deliver, but did not deliver. The evidence on this point is too slight and unimportant to merit particular notice.

The evidence in relation to the thirty-six logs, though entitled to more consideration, is yet unsatisfactory. Even if it be conceded that the logs were carried to the navy yard, as alleged, still it does not seem to us that the petitioner, or his agent, did all that he ought to have done. But the evidence is not satisfactory in any respect.

The witness, Ratcliff, testifies that he saw sticks of timber scattered over the water, charred or partially burnt, which his uncle claimed as part of the raft previously delivered, but that the same could not be identified or collected. Captain Doughty, in answer to the question "was there any timber destroyed at the dock by burning the yard?" said, "there was, as well as my recollection serves me. The timber was burnt on the surface." We do not understand this witness as saying anything more than that the timber was burnt on the surface. Neither he nor Ratcliff testifies to what extent it was injured, or whether it was at all lessened in value. Ratcliff was then a boy of only ten or eleven years of age, and probably could not have stated, with any confidence, whether the timber was really injured or not. He states that the logs could not be identified, but he does not state why they could not. He also states that they could not be collected, but he does not state what rendered this impracticable. The petitioner himself has made a special *affidavit*, but he does not pretend to explain these matters. He merely says that he went to the yard, and told Doughty that he had delivered a raft there some days before, of which Doughty said he knew nothing. But he did not then call Doughty's attention, or the attention of any other person, to the very logs themselves then scattered on the water; nor did he bring forward Mr. Neale to testify to the delivery. On the contrary, he remained silent for nearly ten years. This is not the course which men generally pursue in relation to such transactions.

Neale testified that when he carried the thirty-six logs to the navy yard, "there being no person there to receive said timber, he made fast," &c. But Commodore Tingey, and the persons usually employed in the yard, except, perhaps, the mechanics, were there. In his first *affidavit* he stated that, when he carried the raft to the yard, he could not find more than two or three men there.—(See Com. Tingey's letter.) Commodore Tingey showed that the usual number of persons, except the mechanics, continued to be employed at the yard till the very day of the fire; and that he and all the other officers

were daily present in the yard the whole of the month of August, A. D. 1814, until after executing the order of the Secretary of the Navy for setting it on fire. Neale's first *affidavit* was, we suppose, a part of the original papers, which were withdrawn on the 11th day of January, A. D. 1827. In his first *affidavit*, he stated that the delivery took place *six* days before the burning of the yard, and afterwards that it occured *three* or *four* days before that event. He testified that the logs averaged 100 cubic feet each; but Carberry, who was the inspector of timber at the navy yard, and well qualified, we suppose, to judge, was of the opinion that thirty-six logs, which would average more than sixty cubic feet each, could not have been obtained on the Potomac. He also testified that the raft delivered by him at the yard three or four days before the fire, was not the only raft which he delivered in the month of August, A. D. 1814; but even the petitioner makes no claim for any other raft delivered in that month. Two different quantities were delivered in July, A. D. 1814, and these may have been the rafts referred to by the witness, Neale; but they were paid for.

But where was the petitioner when Neale delivered the thirty-six logs at the navy yard? Did Neale inform him what he had done? Why did not the petitioner, during the three or four days, or five or six days, which intervened between the delivery of the logs and the burning of the yard, call on the commandant of the yard, and request him to appoint some person to receive the timber? Why, if the commandant could not do this, did he not apply to the Secretary of the Navy for aid in the premises? There may have been very good reasons why nothing of this sort was done; but they do not now appear. Nor is there any satisfactory explanation given why the petitioner did nothing whatever in the way of prosecuting his claim, or of procuring evidence to sustain it for nearly ten years. Further commenti s unnecessary.

We are of the opinion that the petitioner is not entitled to relief.

¶

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 214.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

C. ANSART'S HEIRS *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Opinion of the Court, adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this first day of April, A. D. 1858.

[L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Court of Claims:

Your petitioners, humbly complaining, respectfully show: That in the year 1776 Lewis Ansart de Maresquelle, captain of infantry in the French service, came to this country for the purpose of offering his services in the revolutionary war then waging with Great Britain. At the time of his arrival the authorities of Massachusetts were engaged in establishing foundries for cannon; and, it being ascertained that said de Maresquelle had great skill and experience in the art, and was possessed of the knowledge of a method of casting iron cannon from the ore, of which his father was the inventor, proposals were made to him to enter the service of the State, as super-

intendent of the proposed foundries; and an agreement was made with him on the following terms: The State to furnish the land and everything necessary for buildings, apparatus and cannon; he to construct the furnace, superintend and direct the buildings, and everything relating to the foundry; to furnish one cannon ready for service every twenty-four hours, out of the common ore of Massachusetts; to prove his cannon before commissioners appointed by the State; to disclose all his knowledge in the premises at any time to those designated by the State, and to none others; to forfeit his pay, and £1,000 in addition, if he did not fully comply with his agreement; to receive $300 in hand, to defray expenses of removal hither, $1,000 yearly during the continuance of the war, and $666⅔ yearly thereafter for the remainder of his life, if he did comply with it; and, finally, to have a colonel's commission, to give him rank, "but without any command or pay in virtue of said commission."

That on the 9th of December, 1776, the agreement above set forth was fully ratified and confirmed with him by the legislature of the State of Massachusetts Bay, and he immediately entered on the discharge of his duties, and continued in the discharge of them, and of such other duties as his superior officers imposed upon him, to the end of the war. That it appears by the proceedings of the council of Massachusetts, at various times, and by numerous public records, that he was uniformly styled "Colonel of Artillery and Inspector General of the Foundries" of said State. That on the 31st of August, 1778, it being represented to said council that Count D'Estaing requested the appointment of an officer to oversee the erection of certain works he thought necessary for the protection of his fleet, said Lewis Ansart de Maresquelle was, as engineer, directed to oversee and direct the erecting said works. That he remained in the service of Massachusetts, as colonel of artillery and inspector general of the foundries, to the close of the war, having been paid as such by that State from time to time; and that, subsequently, under the act of Congress of May 7, 1787, the payments so made to him by that State were preferred against and paid by the United States as part of the revolutionary military claim thereof.

That on the 9th day of September, 1781, the said Lewis Ansart de Maresquelle was lawfully married to Catharine Wimble, which was before the expiration of his said military service.

That after the end of the said war, he procured, by act of the legislature of Massachusetts, the change of his name to Lewis Ansart. That he remained in that State, as a citizen thereof, from the close of said war to the time of his death, which occurred on the 22d of May, 1804.

That after his death the said Catharine Ansart, (formerly Catharine Wimble,) whom he had left his widow, continued his widow until her death, which occurred on the 27th day of January, 1849. That during the said lawful wedlock of the said Lewis Ansart and the said Catharine there were born to them a number of children. That of these the following, and no more, survived the said Catharine, viz: Atis Ansart, Julia A. Varnum, Abel Ansart, Felix Ansart, and Sophia Spaulding, all of whom are now living.

That during her lifetime the said Catharine applied to the proper department for a pension for the services of her deceased husband, under the act of Congress of 4th July, 1836, but failed to obtain it, and that neither did she, during her life, nor have her representatives nor children, nor either nor any of them, since received the whole or any part of the pension so due, as aforesaid; and that the sole right thereto remains in her said children, a majority of whom are your petitioners, who, for themselves, and in behalf of the rest, pray for such relief as the law allows, and equity and good conscience demand.

And, as in duty bound, will ever pray.

F. F. C. TRIPLETT,
Attorney for Petitioner.

IN THE COURT OF CLAIMS.

ANSART'S HEIRS *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

The petition states the following as the facts in the case:

In the year 1776 Mr. Ansart, the ancestor of the claimants, made an agreement with "the authorities of the State of Massachusetts" respecting a foundry for casting cannon as follows:

"The State to furnish the land and everything necessary for buildings, apparatus and cannon; he (Ansart) to construct the furnace, superintend and direct the buildings, and everything relating to the foundry; to furnish one cannon ready for service every twenty-four hours, out of the common ore of Massachusetts, * * * * to receive $300 in hand to defray expenses of removal hither; $1,000 yearly during the continuance of the war; and $666⅔ yearly thereafter for the remainder of his life, if he did comply with it, (the contract,) and finally to have a colonel's commission to give him rank; 'but without any command or pay in virtue of said commission.'"

On the 9th of December, 1776, said agreement was ratified and confirmed by the legislature of Massachusetts; and Mr. Ansart immediately entered on the discharge of his duties, and continued to discharge them to the end of the war. It appears by the proceedings of the council of Massachusetts, and by public records, that Mr. Ansart was uniformly styled "colonel of artillery and inspector-general of the foundries" of said State. On the 31st of August, 1778, said council directed him, as engineer, to oversee and direct the erecting of certain works for protecting the fleet of Count D'Estaing. Mr. Ansart remained in the service of Massachusetts as colonel of artillery and inspector-general of the foundries to the close of the war, having been paid as such by that State from time to time. And subsequently, under the act of Congress of May 7, 1787, the payments so made to him by said State were preferred against and paid by the United States as part of the revolutionary military claim thereof.

On the 9th of September, 1781, Mr. Ansart was married to Catharine Wimble, which was before the expiration of his military service, and

he remained in Massachusetts, as a citizen thereof, from the close of the war to the time of his death, which occurred on the 22d of May, 1804.

The said Catharine, widow of Mr. Ansart, applied to the proper department for a pension on account of the services of her deceased husband, under the act of Congress of the 4th of July, 1836; but her application failed, on the ground that the service of her husband was not "in a military capacity."—(Ex. Doc., Sen., No. 37, 32 Cong., 1 sess.) She remained a widow until her death, on the 27th of January, 1849.

The petitioners are a majority of the children of said marriage, who, for themselves and the rest of the children, pray for relief.

This is an application for a pension under the third section of the act of Congress of the 4th of July, 1836, entitled "An act granting half-pay to widows or orphans," &c. That section is as follows:

"SEC. 3. *And be it further enacted*, That if any person who served in the war of the revolution, in the manner specified in the act passed the 7th day of June, 1832, * * * have died, leaving a widow, whose marriage took place before the expiration of the last period of his service, such widow shall be entitled to receive, during the time she may remain unmarried, the annuity or pension which might have been allowed to her husband, by virtue of the act aforesaid, if living at the time it was passed."—(5 Stat. at Large, p. 128.)

The act of the 7th of June, 1832, referred to in the above named section, provides "that each of the surviving officers, * * * * who shall have served in the continental line or State troops, volunteers, or militia, at one or more terms, a period of two years during the war of the revolution * * * * be authorized to receive * * * * the amount of his full pay in the said line, according to his rank," &c.—(4 Stat. at Large, p. 529.)

This case requires us to determine whether Mr. Ansart was such an officer as is described in said act of 1832. In other words, did he serve as an officer in the continental line, or State troops, volunteers, or militia, during the war of the revolution, &c., receiving full pay in said line?

It is very clear that he did not serve as such officer. According to the petition, he made an agreement, in 1776, with the State of Massachusetts respecting a foundry for casting cannon. He was to construct the furnace, superintend and direct the buildings, &c., for which service he was to receive a certain compensation from the State, and was to have a colonel's commission to give him rank, *but without any command or pay in virtue of said commission.* He had, therefore, the mere title of a colonel, without being authorized to serve in the continental line or State troops, volunteers, or militia, or to receive any pay as such officer. He was in no respect, a military officer within said act of 1832, and would have had no claim to a pension had he been living when the said act of 1832 was passed.

Our opinion is, that on the face of the petition there is no cause of action.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 215.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of—

OLIVER DUBOIS *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Depositions filed by claimant in support of claim, with answers to cross-interrogatories filed by the United States Solicitor, transmitted to the House of Representatives.
3. Solicitor's brief.
4. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington, this first day of April, A. D. 1858. [L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

To the honorable the Judges of the Court of Claims:

The petition of Oliver Dubois respectfully represents: That for many years past your petitioner has been engaged in the business of buying and selling horses, and has had large dealings therein with the government of the United States through the quartermaster's department.

Your petitioner further shows, that in April, A. D. 1847, Captain J. A. Belger was acting officially as assistant quartermaster of the United States army in New Orleans, representing himself, and universally taken and acknowledged to be, authorized to purchase horses for

the United States, and then actually engaged in making such purchases and exercising the sole control and direction of the inspection of horses so purchased; and that your petitioner had previously, from time to time, made large sales of horses to him for the government, for all of which he was duly paid, so that, from repeated recognitions by the government of said Belger's contracts with your petitioner, the latter was entitled to consider him, the said Belger, as fully authorized to enter into contracts of this description on behalf of the United States. Your petitioner shows, that about the 12th of said month of April he was called upon by said Belger, who entered into a contract with him on behalf of the government, by the terms of which your petitioner was to proceed immediately to the western States, and to purchase five hundred horses for the use of the government of the United States, which were to be forthwith transported to New Orleans, and to arrive in a reasonable time, and immediately upon their arrival were to be inspected by the proper officer in the same manner, and paid for at the same rates, as horses theretofore sold to the government by your petitioner.

Your petitioner further shows, that he proceeded immediately to Cincinnati, and labored so diligently to complete his contract that as early as the 19th of the next month, (May,) eighty-two of the horses arrived in New Orleans, and the rest had been shipped in good order and condition, and all subsequently arrived as soon as required and agreed; that meanwhile, as your petitioner learned after the last mentioned date, Captain Belger left New Orleans for Kentucky, upon leave of absence, and there being no officer to attend to the inspection of the horses in his absence, he directed the agent of your petitioner to hold the said horses *in pasture* under "keep," so called, and to be daily and duly fed until his return, or until proper inspection could be made, it being impossible to procure stable room for such a number of horses in New Orleans; and this was acceded to under a stipulation by said Captain Belger, that your petitioner should be paid thirty cents per day for each horse thus pastured, carefully kept, and daily fed.

Your petitioner shows that, with the exceptions hereinafter mentioned, all the horses sent to New Orleans were subsequently accepted for the government and paid for, but that, during the interval between their arrival and inspection, there became due to your petitioner, for keep of said horses under his contract aforesaid, the sum of three thousand seven hundred and fifty-seven $\frac{80}{100}$ dollars, ($3,757 80,) which has not yet been paid; that he not only considers said sum due to him under the express contract *for keep* of Captain Belger, but, independently of said contract, this would be but a moderate charge, at rather less than usual rates, for the expenses and damages incurred by him in consequence of the failure of the government agents to inspect the horses upon their arrival according to the *original contract*, and he is advised constitutes a strong legal claim.

In addition to the above your petitioner suffered other serious injury from the delay in the inspection. Twenty-nine of the horses, which had arrived in as good order as, and were in all respects equal to, those subsequently accepted, from more than a month's exposure to the climate, were attacked with distemper or otherwise injured, and died;

five of the horses escaped or were stolen from the enclosure, and fifteen were reduced in value fifty per cent. and not offered for inspection, notwithstanding, as your petitioner avers, the utmost care and diligence exercised in atending to them.

Your petitioner shows that the horses were to be paid for at the rate theretofore usual, of one hundred dollars each, and his claim may be justly stated as follows:

UNITED STATES,

To Oliver Dubois, Dr.

For keep of 442 horses for different periods, from May 19th to July 3d, at 30 cents	$3,757 80
For value of 29 horses which died	2,900 00
For value of five horses lost	500 00
For depreciation of 15 horses 50 per cent	750 00
	$7,907 80
Interest from July 1, 1848	

Your petitioner will be prepared, when required, to furnish proof of the several items, and, in particular, of the details of dates, numbers, and amounts composing the first item aforesaid.

He further shows that the quartermaster at New Orleans did not feel authorized to settle his accounts aforesaid, and he forwarded them, with vouchers, through Hon. Eugene Le Sere, then member of Congres, to the War Department in Washington; that by some accident the whole were lost or mislaid, and after considerable delay and trouble he has been able to procure fresh vouchers for his said claim; that there has been no action upon the claim in the department, and it has not been before Congress, and that no part of it has been assigned, but it belongs wholly to your petitioner.

Respectfully submitted,

OLIVER DUBOIS.

DISTRICT OF COLUMBIA, *Washington county,* } *ss.*

On this twelfth day of July, A. D. 1855, before the subscriber, a justice of the peace in and for the county aforesaid, personally appears Oliver Dubois, who makes oath according to law that the facts stated in the aforegoing and annexed petition are true, to the best of his knowledge and belief.

H. ADDISON, *J. P.*

DISTRICT OF COLUMBIA, *Washington county,* } *to wit:*

I, John A. Smith, clerk of the circuit court of the District of Columbia for the county of Washington, hereby certify, that Henry Addison, esq., before whom the above and annexed affidavit was made, and who has thereto subscribed his name, was at the time thereof a justice

of the peace in and for the county and district aforesaid, duly commissioned and qualified, and that his signature thereto is genuine.

In testimony whereof, I haveunto subscribed my name and affixed [L. S.] the seal of said court, this twelfth day of July, 1855.

JNO. A. SMITH, *Clerk.*

IN THE COURT OF CLAIMS.

ON THE PETITION OF OLIVER DUBOIS.

Brief of the United States Solicitor.

This claim is for the keep of horses, $3,757 80; for value of 29 horses which died, $2,900; ditto, of 5 lost, $500; and depreciation of 15 at 50 per cent., $750. Total, $7,907 80.

It is alleged in the petition that the horses in question were bought by the claimant for the government, under a contract made with Captain Belger, of the quartermaster's department, to be paid for when the horses were inspected and delivered at New Orleans; and that Captain Belger left New Orleans before the horses arrived, but agreed with the claimant that the United States should pay for the keep of the horses during his absence, and till the horses were inspected; that the horses arrived soon after Belger left, and in consequence of his absence were not then inspected and received by the government. In the interim they were kept by claimant, and thus the *first* item became due. 2. Some of the horses died after reaching New Orleans, therefore, and whilst being pastured under the direction of Belger, and after they ought to have been inspected and received, but were not, in consequence of the absence of the inspector; some were lost and some depreciated in value during the same time, and for the same reason, and these losses constitute the second ground of claim.

The contract stated in the petition is not proved. The witness of claimant does not pretend that the horses were the property of the United States, in any sense, at the time for which the charges are made; and General Jesup states, positively, that he told Dubois himself that the government would authorize no purchases elsewhere than *in* New Orleans, and the witness of the claimant does not pretend that Belger violated this order. All that he says is, that Belger, who was the inspector, when about going for a short time from New Orleans, told him "that the keeping of the horses ordered and received should be paid for at the same rates that they were paying for other horses, to wit: 30 cents per day for each horse." This neither proves that Belger or any other officer had ordered the horses. "The *keep* of the horses ordered and received should be paid for," &c.

The witness is speaking and thinking of the payment for the keep of the horses, not of a contract for the purchase of horses; and neither says nor implies that such a contract for the purchase was made by Belger. a is charged in the petition. He speaks, indeed, of horses ordered to be brought to New Orleans, but does not say by whom that

order was given, much less that any contract was made on the subject by Belger, who denies explicitly making any such contract. General Jesup says orders of the most peremptory kind were given not to make such contracts; and are we nevertheless to infer that such a contract was actually made, merely because a witness says horses were *ordered* to be brought to New Orleans? The orders he refers to were no doubt the orders of Dubois himself, who, with good reason, from information of the wants of the government, anticipated selling the horses to the United States on their arrival at New Orleans.

The petition represents, on the contrary, that the horses were purchased under a contract with Captain Belger, and were, in fact, the property of the government from the time of the purchase by Dubois, if they would pass inspection. This is the contract which Dubois sought in person of the Quartermaster General, and which the general refused to make, and how wisely, this claim illustrates.

We must in the outset, therefore, discard the idea that Dubois had any contract with the quartermaster's department when his horses arrived at New Orleans; he might have sold them to any person without violating a contract, or the government might have refused to buy one of them without violating any engagement with him. Dubois was a large dealer in these animals at New Orleans, and the United States were purchasing largely; he informed himself of the number and character of the animals required, and also probably of the purchases that others were making to supply the government, and on the calculation the number he bought would be purchased of him, he went to the west to make the purchases. This is the positive statement of the officers of the United States, and it is not contradicted by the claimant's witness.

Before his horses arrived at New Orleans, the officer of the government who was relied on to inspect the animals before they would be received, is permitted to be absent temporarily, and thus suspend the purchases of the government.

No doubt the horses were ordered by Dubois for the government, and they would not have been bought unless in the expectation of selling them promptly to the United States on their arrival at New Orleans. But this, though a well founded and reasonable calculation, was not *contracted for* by the United States. The fact that the purchases were made on this calculation occasioned anxiety to Mish and Dubois when they found Belger, the inspector, compelled to be absent from his post, and to their inquiries on the subject, he may have expressed the *opinion* that the keep might be allowed under the circumstances of the case; but he was fully aware then that the United States were not *legally* bound to pay it. See his deposition, answer to 1st cross-interrogatory, and so reported to Colonel Hunt.

[The deposition of Belger was badly taken. I requested that he should be asked to state all the circumstances of the case, and sent with my note the cross-interrogatories to be forwarded, but it appears by the deposition that nothing but cross-interrogatories were submitted to him; however, enough appears there for my purposes.] He says he made no positive agreement with Mish for the keeping of the horses. He was not authorized to do so; but merely agreed to speak

to Colonel Hunt, the senior officer at New Orleans, under whom he was acting, and state the circumstances for his action. That Belger did no more than express an opinion on the subject of the allowance of the keep, and agree to make an effort to procure it, is not only probable, but is consistent with what all the witnesses swear.

Belger himself swears that he did not contract for the government in this matter at all; that he was not authorized to do so. He was in fact, a mere subordinate, and but recently introduced in the quartermaster's department, acting under the orders of Colonel Hunt, at New Orleans, with no power to make contracts, except with Colonel Hunt's approval. Dubois describes himself as transacting much business with the department, and therefore must have known that Belger, a mere subordinate to Colonel Hunt, at New Orleans, could not make such a contract without his sanction.

He does not charge in his petition that Belger had full authority in relation to the subject. He charges that Belger "was acting officially as assistant quartermaster of the United States army in New Orleans, representing himself, and universally taken and acknowledged, to be authorized to purchase horses for the United States, and then actually engaged in making such purchases, and exercising *the sole control and directions of the inspection of the horses so purchased.*"

This language recognizes the fact that Belger did not exercise sole control, except in the inspection, and that the claimant knew perfectly well that Belger—although argumentatively it would create the impression that Belger had authority—was but the inspector. What is said by the petition itself and the witness of Belger's purchasing horses is explained to be no more than that to him was confided the duty of saying whether the animals offered were up to the standard for the service; and when he said they were, and accepted them, Colonel Hunt paid for them. This was the extent of the duty assigned to Belger, according to Dubois and Mish's account of it. Mish says, indeed, that similar contracts of Belger's had been recognized and the money paid. But this is clearly an erroneous statement, for it is evident that no such contract had ever been made *before*, and the occasion of this was Belger's contemplated absence. Mish means only that Belger had previously inspected horses, and his certificates had been acted on by Colonel Hunt, and the money paid on presenting them. But this is a very different transaction. Belger had not gone away before, and therefore had never had occasion to make any agreement to pay for the feed of horses awaiting inspection in consequence of his absence. He could not, therefore, ever have previously made a similar agreement to that which is claimed to have been made in April, 1847, to pay for the keep of horses during his absence. Therefore, Mish merely means to say, when he says that Belger had previously made similar contracts, that he had previously given certificates of inspection, on which payment had been made by the quartermaster, Colonel Hunt, and therefore was not authorized to infer that Belger was empowered to make such a contract from the duties which Belger had previously fulfilled, that of a mere inspector. He is said, indeed, to have bought horses; but this must also be intended to mean only that he had inspected them, because it appears that he had no power

to pay for them. Colonel Hunt, his superior, made the payment, and therefore made the purchases. This is the test. The officer in whom the authority to pay resided was the purchaser of the horses. Everything done by others was conditional, and required his sanction, expressly or by implication, and he refused to sanction the contract supposed to have been made for the payment of the keep of those horses. He might have refused to pay for the horses even after inspection by Belger, if he had thought proper for any reason not to act on Belger's report. Belger was, then, by admission, an assistant not a controlling officer, and though in fact his acts, so far as inspection was concerned, may have been uniformly approved by payment, yet these acts without such approval would not bind the government without deposing Colonel Hunt, and making Belger the superior officer.

As respects the testimony of Smith as to what took place at Louisville, that is incompetent evidence. It is offered to prove an acknowledgment of Belger that he had previously made the contract sought to be established. Belger is not the party sued here, and his acknowledgments of what he had done some time before as agent is not evidence.

Mish's several statements differ materially. In the paper marked "Rough draft from which affidavit of William Mish was made in July, 1848," accompanying his depositions, he does not pretend that Belger ordered the horses to be put to pasture, and thus caused the exposure to the sun which occasioned their death. This, however, is stated in the other depositions. The reason of the difference is this: The court will see by the account then made out that it had not occurred to Dubois to charge the United States for the dead or lost horses, Having determined to claim for these as well as for the keep of the live horses, the witness accommodates his testimony to suit the exigency, and Belger is made not only to agree to pay for the keep, but to prescribe the particular manner of keeping, in consequence of which the loss occurs by the death and escape of some horses, and the depreciation of others.

As to these items of the claim, unless the court should think that the horses belonged to the United States when lost or depreciated, it is difficult to understand upon what principle Dubois should be paid for them. It is not pretented by Mish that Belger, when about leaving New Orleans, agreed that the United States should be responsible for such losses.

But the question as to whether there was a contract made, by which the United States was bound to receive the horses on their arrival at New Orleans, is the turning point in the case. If such a contract was made, I concede that the United States was liable for the feed after their arrival, &c. If there was no such contract, the contract for feed imputed to Belger was void for want of consideration. There is no proof of the contract charged in the petition by which the United States was bound to receive these horses on their arrival. The proof, on the contrary, shows clearly that no such contract was made; that all that was done was to let Dubois, like other inquirers, know that the United States wanted the horses, and would buy at New Orleans, and the losses which accrued were therefore not covered by any contract.

M. BLAIR.

IN THE COURT OF CLAIMS.

OLIVER DUBOIS *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

The petition, so far as it need be stated, is as follows:

That about the 12th of April, 1847, Captain Belger, being sufficiently authorized, entered into a contract, on behalf of the United States, with the claimant, by which contract the latter was to proceed from New Orleans to the western States to purchase 500 horses for the government, and transport them to New Orleans; and that the horses, on their arrival at New Orleans, were to be inspected in the same manner, and paid for at the same rates, as in case of horses theretofore sold to the government by the claimant; that the horses were accordingly purchased and transported to New Orleans; that Captain Belger, then absent on leave, had directed the claimant's agent to keep the horses in pasture until they could be inspected, and had stipulated that the claimant should be paid thirty cents per day for the keeping of each horse; that, subsequently, except as hereafter noticed, all the horses sent to New Orleans as aforesaid were accepted and paid for by the government; that during the interval between the arrival of the horses and their acceptance, the government became indebted to the claimant as follows:

For keep of 442 horses	$3,757 80
For value of 29 horses which died from effects of the climate	2,900 00
For value of five horses lost	500 00
For depreciation in value of 15 horses, 50 per cent	750 00
	7,907 80

Interest from July 1, 1848.

The alleged contract with the claimant for the purchase and transportation of horses is not proved, and must be laid out of the case.

In order to prove the charges for the keeping of the horses, and so forth, the claimant has introduced two depositions of William Mish, taken in New Orleans, one in 1855 and the other in 1857. The following is the substance of the deposition of 1857:

That the witness was the agent of the claimant in New Orleans from 1837 to about 1850; that the account made out by George Williams, the claimant's book-keeper, for the keep of horses alone, amounted to $3,758 80; that said charges were correct; that Captain Belger told the witness repeatedly that the keeping of the horses ordered and received should be paid for by the government at thirty cents per day for each horse, which was the rate agreed upon between the witness and Captain Belger for all the horses to be kept for the United States; that, after this contract with Captain Belger, acting, as the witness understood, for the government, Belger said he was going to Kentucky on short leave, and directed witness to turn all the horses then on hand, and all that should arrive, on a pasture then designated by him, and to have them there fed with grain, and the government would pay thirty cents per head for each day; that the

greater part of the horses ordered were then on their way to New Orleans, or had arrived, and that all ordered arrived very shortly after Captain Belger left for Kentucky; that during Captain Belger's absence, and the time the horses were received, there was no one whom the witness knew to represent Captain Belger in the inspection of the horses expected to arrive, and Captain Belger told the witness that no one was authorized to inspect horses until he returned.

This witness further states that he knew that, notwithstanding all proper care was taken, twenty-two of the horses died from diseases of the climate; that fifteen were so reduced from the same causes as not to be worth more than one-half the government price; that he knew of the loss from the pasture of one of the horses; that the charge of $750 for the fifteen horses reduced is correct; that the witness, of his own knowledge, can depose only to the correctness of—

1st.	The keep	$3,758 80
2d.	Twenty-two horses dead	2,200 00
3d.	One horse lost	100 00
4th.	Reduction as charged	750 00
		6,808 80;

and that previously to the above transactions, Captain Belger had been in the habit of purchasing horses as the agent of the United States, and whatever prices he bought them at were paid by Colonel Hunt, United States quartermaster at New Orleans.

This deposition of Mr. Mish is very similar to his other, taken in 1855.

We have the deposition of Captain Belger. He says that he made no positive agreement with Mish for the keeping of horses mentioned in the petition, and that he was not authorized to do so; that the horses that were purchased and being purchased at that time in New Orleans for the public, were kept by Hayden & Kelly, of Lafayette, La., by contract; that he stated in his letter to Colonel Hunt, of July 8, 1847, that he told Mr. Mish he should speak to him (Hunt) on the subject, and if he thought it a proper claim it would be paid, as the witness considered him the proper judge in the matter; that the witness' opinion in reference to the charge made by Dubois for keeping horses, contained in the same letter, was adverse to the claim; that Colonel Hunt was the only officer who could have sanctioned such an agreement; that what the witness did in regard to the purchase and management of horses for the public in New Orleans, at that time, was by instructions received from Colonel Hunt; that the witness was serving under his immediate orders, and could not have made such an agreement without his sanction.

John Smith, in his deposition, says, that at the Galt House, in Louisville, Kentucky, in May or June, 1847, (he is not certain as to the date,) he was in company with Oliver Dubois and Captain Belger, and he heard Captain Belger tell Mr. Dubois that he, Captain Belger, had told Mr. Mish (Dubois' agent at New Orleans) to have the horses turned out until the time of inspection, and that the keep should be paid to him for them.

There is one other deposition, and that is the deposition of General T. S. Jesup, Quartermaster General. This witness states that sometime in November, 1848, (he thinks,) a claim was presented to the Quartermaster General's office, through Lieutenant Colonel Thomas F. Hunt, who had been on duty as principal quartermaster at New Orleans during a portion of the war with Mexico, in behalf of Oliver Dubois, for the keeping of a number of horses between the 19th of May and the 3d of July, 1847, and, as appears by the records of the Quartermaster General's office, for twenty-nine horses that had died, five reported to have been lost, and for fifteen that had been reduced, as it was said, fifty per cent., these items of the account bearing date the 6th of July, 1847; that the whole claim was rejected on the ground that Mr. Bubois had no authority to keep horses at the public expense which did not belong to the government, and that the government was not responsible for horses that had died, been lost, or reduced while in his possession; that he (Dubois) was understood to have based his claim on a contract with the junior officer of the quartermaster's department, who had no authority to make such a contract; that Dubois had applied to be allowed to purchase horses; that the witness had directed, as the Quartermaster General of the army, on his arrival in New Orleans in the autumn of 1846, that the horses for the service in Mexico should be purchased only in New Orleans; that Dubois was understood to be desirous of going to Kentucky and other western States to purchase horses for the government, which could not be granted him, for it would have been giving him an advantage over all persons who were furnishing horses. The witness says that he informed Mr. Dubois, in the presence of Major Belger, the officer with whom he claimed that his contract had been made, that he could authorize no purchases elsewhere than in New Orleans; that the witness returned from Vera Cruz to New Orleans in the beginning of April, 1847, and confined the purchases to New Orleans.

This is a plain case. The horses, at the time they were kept, as charged, were not the property of the United States. Taking all the testimony together, we are satisfied that the alleged contract for the keeping of the horses is not proved. But even if the contract were proved, it would make no difference, because it is clear that Captain Belger had no authority to make any such contract. Captain Belger himself says that he had no such authority, and the Quartermaster General says the same. It is impossible, therefore, to decide that the United States are liable to pay for the keeping of horses which did not belong to them, and for which keeping they did not expressly or impliedly promise to pay. Nor is there the slightest foundation, under those circumstances, to charge the United States with the loss to the claimant occasioned by the so putting the horses to pasture.

This whole case may be summed up in a few words.

In 1847 the Quartermaster General authorized the purchase of horses at New Orleans for the government. The claimant brought horses there in order to sell them to the government, but the inspector being absent, the sale was not made. The claimant then put the horses out to pasture, where some died, some were stolen, and some became poor. The residue of the horses were afterwards bought and

paid for by the government. The government is now sued by the claimant for the said keep of the horses at pasture, and for the value of those that died, &c. The ground of the suit is, that the horses were put to pasture by direction of the government, and under its agreement to pay the expense. The conclusive answer to the suit is, that no such direction or agreement by the government, as relied on, has been proved.

It is proper to notice that the Solicitor objected to said deposition of Smith, and the objection is, no doubt, valid. As there was no proof of Belger's agency, the contract, if there was one, was void as to the government, and the supposed acknowledgment of it was, of course, immaterial. If it be said that as Belger was asked, on cross-examination, whether he had made the acknowledgment, and had answered that he did not recollect to have done so, his testimony might be impeached by proving the acknowledgment, the answer is, that the acknowledgment being of an immaterial fact, proof of it was not admissible for any purpose.

It is also proper to notice that the claimant states in his petition that there had been no action upon the claim in the department, when, on the contrary, the deposition of the Quartermaster General says that the claim had been repeatedly pressed on the department and always rejected.

We are of opinion that the claimant has no cause of action.

35TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 216.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

A. O. P. NICHOLSON *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Schedule of certificates of Superintendent of Public Printing to claimant, and transmitted to the House of Representatives.
3. Claimant's brief.
4. Solicitor's brief.
5. Opinion of the Court on the petition.
6. Final opinion of the Court.
7. Dissenting opinion of Judge Gilchrist.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this first day of April, A. D. 1858. [L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the Judges of the Court of Claims:

The petition of Alfred O. P. Nicholson respectfully showeth: That, on the first day of March, in the year one thousand eight hundred and fifty-four, he was duly elected by a majority of all the votes given to the office of public printer of the House of Representatives of the United States, under the act hereinafter mentioned, and he was declared by the presiding officer of said House to be duly elected as such printer, and that he then took upon himself the performance of the duties of public printer for said House, and hath from thence hitherto

performed, and still is performing, the duties required by law to be performed by such public printer.

And your petitioner further represents that, at the time of his said election, the compensation provided by law for his said services as such public printer was fixed and defined by virtue of an act of Congress entitled "An act to provide for executing the public printing and establishing the prices thereof, and for other purposes," approved August 26, 1852.—(Session Laws, 1851–'52, page 30.) And that, under and by virtue of said act, your petitioner become entitled to receive from the treasury of the United States divers large sums of money for services actually rendered and performed by your petitioner, his agents, and servants, by virtue of his said office of public printer to said House.

And your petitioner further represents that, on or about the twentieth day of July last, Congress passed a joint resolution, which was approved by the President of the United States, and which, among other things, provided as follows:

"*A joint resolution to fix the compensation of the employés in the legislative department of the government, and to prohibit the allowance of the usual extra compensation to such as receive the benefits thereof.*

"*Resolved, &c.*, That the officers, clerks, messengers, and other employés in the legislative department of the government, shall be paid an increased compensation of twenty per cent. upon the compensation now received by them, respectively; and the messengers of the House of Representatives shall not receive less than is allowed to the messengers of the Senate of the same class; such increased compensation to commence from the first day of July, eighteen hundred and fifty-three; and that a sum sufficient to pay the same to the thirtieth of June, eighteen hundred and fifty-five, is hereby appropriated out of any money in the treasury not otherwise appropriated," which will be found at page 594 in the Statutes of Congress, as published by Little, Brown & Co., for 1853–'54.

And your petitioner further represents that he is an officer and employé in the legislative department of the government, and included, and provided for, in and by the said resolution.

And your petitioner further represents that, prior to the first day of September, 1854, he become entitled to receive under and by virtue of the said resolution, as an increased compensation, a large amount, to wit: about the sum of fifteen thousand dollars; and that on or about that day he demanded payment of the amount of the said increased compensation, and which was then due, at the Treasury Department of the United States, and that on or about the twentieth day of September, 1854, payment thereof was refused by the Secretary of the Treasury. And your petitioner further represents that said payment was not refused upon the ground that your petitioner had not performed the services for which he charged, but because, as the said Secretary alleged, that it was not or could not have been the intention of Congress to include and provide for your petitioner under and by virtue of said resolution, whereas your petitioner was and is included therein, and fully and clearly entitled to the said increased

compensation. And your petitioner further represents that the said sum of money so due to him, as such increased compensation, still remains due and unpaid, and in no way satisfied or discharged.

And your petitioner further represents that since the time of making said application for payment, and the refusal to make said payment, your petitioner has continued to discharge the duties of said office of public printer, and that he has still further printing to perform, which was duly ordered by Congress before its adjournment, and that there is now due to him, for such increased compensation, a large sum, but which your petitioner cannot now fully state and set forth; and that there will hereafter be due a further large sum for such increased compensation, but which he cannot now estimate.

And your petitioner further represents that he is lawfully and justly entitled to the said increased compensation upon all the work which he has or shall perform as such printer by order of the said House of Representatives; and he prays that this honorable Court will ascertain the amount due to him for said extra compensation, and order and decree the same to be due and payable to him in conformity with the provisions of the act establishing this honorable Court.

And your petitioner further represents that he is the sole legal owner of the said claim, and is entitled to receive the same, but that, at the time of his appointment as such public printer, he publicly announced in the "Union" that he would share the profits of said printing equally with the legal representatives of the late Robert Armstrong, who held said office at the time of his death; which announcement he intends to conform to and fulfill.

A. O. P. NICHOLSON.

Dated *June* 21, 1855.

DISTRICT OF COLUMBIA,
City and County of Washington, } *ss*

Alfred O. P. Nicholson, being duly sworn, doth depose and say, that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

A. O. P. NICHOLSON

Subscribed and sworn this twenty-third day of June, 1855, before me.

J. D. CLARK,
Justice of the Peace.

A. O. P. NICHOLSON *vs.* THE UNITED STATES.

The opinion of the Court was delivered by Chief Justice GILCHRIST.

The joint resolution of August 3, 1846, (9 Stat. at Large, 113) provided that the printing of Congress should be let to the lowest bidder, and should be done by contract. By the act of August 26, 1852, (1st session 32d Congress, page 30) this resolution was repealed. The 2d section of this act provided that there should be a superintendent of the public printing. The 8th section enacted that "there shall be elected a public printer for each House of Congress, to do the printing

for the Congress for which he or they may be chosen," &c., and it stated also the rates of compensation for such printing as might be ordered by Congress.

By the 2d section of the act of April 22, 1854, (1st sess. 33d Cong. page 276) it was enacted that twenty per cent. be added to the pay of the messengers, packers, laborers, and watchmen of the different excutive departments of the government, and to certain other persons specified therein.

On the 20th of July, 1854, (1st sess. 33d Cong., page 594) it was provided by a joint resolution that "the officers, clerks, messengers, and other employés in the legislative department of the government shall be paid an increased compensation of twenty per cent. upon the compensation now received by them respectively." This increased compensation was to commence from the 1st day of July, 1853, and a sum sufficient to pay it to the 30th of June, 1855, was to be appropriated. It was provided also, that no person whose compensation was increased by the act of April 23, 1854, should be benefitted by the resolution.

On the 1st day of March, 1854, the claimant was elected public printer of the House of Representatives, and his allegation is that he is an officer and employé in the legislative department of the government, and included and provided for by the resolution.

The question, therefore, is, whether he be such an officer or employé as the resolution contemplates. As it is very evident that he is neither a "clerk" nor a "messenger," he must be either an "officer" or an "employé" in order to be entitled to the compensation he seeks.

The word "employé" has been adopted from the French, and considerably used by us. It is a noun, the meanings of which are defined to be, "1. person employed; person in another's employ. 2. (pub. admn.) clerk." It is very difficult to imagine who are properly included in the class of employés if the public printer be excluded. He is a person employed in the legislative department for a certain purpose, as much so as any person can be said to be employed in any department. The term is generic, and is so used in the act, for the words are "officers, clerks, messengers, and other employés," thus applying the word "employé" to each of the classes specifically mentioned. There is no room for any etymological refinements. The natural and plain meaning of the word is such as to include the claimant.

But the claimant is also an "officer" in the legislative department. We need go no further than the language of Chief Justice Marshall to be satisfied of this. In the United States *vs.* Maurice, (2 Brock., 103,) he says, "an office is defined to be a public charge or employment, and he who performs the duty of an office is an officer. If employed on the part of the United States, he is an officer of the United States. * * If a duty be a continuing one, which is defined by rules prescribed by the government, and not by contract, which an individual is appointed by government to perform, who enters on the duties appertaining to his station without any contract defining them, if those duties continue though the person be changed, it seems very

difficult to distinguish such a charge or employment from an office, or the person who performs the duties from an officer."

There is a rule to be applied in the construction of statutes which is familiar to the lawyer as established by authority, and which is recommended alike to him and all other persons by its practical good sense and necessity, and this is, that the meaning of a statute is to be ascertained from the language used, and not by inquiring of the individual members of the legislature what they intended by enacting the law. In the case of Aldridge *vs.* Williams, (3 Howard, 24,) the court say: "In expounding this law the judgment of the court cannot, in any degree, be influenced by the construction placed upon it by individual members of Congress in the debate which took place on its passage, nor by the motives or reasons assigned by them for supporting or opposing amendments that were offered. The law, as it passed, is the will of the majority of both Houses, and the only mode in which that will is spoken is in the act itself, and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, and looking, if necessary, to the public history of the times in which it was passed." If Congress pass a law, the natural import of which is different from the effect intended to be given to it by those who voted for it, the only safe rule, nevertheless, is to take the act as it stands as conveying the intention of Congress. If the law be defective, it can be remedied only by subsequent legislation. This general principle is too well and too widely established to need a reference to authorities to sustain it at this late day. In this case the word "officer" and the word "employé" are terms of the most general and comprehensive character. There is nothing in the resolution to modify them or to limit their application to officers or employés of any particular description. If the claimant can fairly be considered as an "officer" or an "employé" it is sufficient. There may be various classes of persons coming within these appellations, but the resolution does not define any particular class to which the claimant is to belong in order to be entitled to the increased compensation. There is nothing inconsistent with other acts of Congress in holding that the public printer is embraced by this resolution. It may or may not be inexpedient that he should be included, and different opinions may have been entertained in Congress as to the propriety of including him; but with such considerations we have nothing to do, our duty being to expound the law and not to make it. Where the language of an act is explicit, and where a person, like the public printer, is appointed to perform certain duties in the legislative department, it is extremely difficult, unless we go beyond the resolution to ascertain its meaning, to state the particular reasons why he is *not* an officer or employé. When it is said that the increased compensation was intended only for those who received fixed salaries for purely personal services, we are constrained to answer, that if such were the intention of Congress they have used no words to indicate it; and that we look in vain for any authority to make such a discrimination between different classes of officers depending upon the manner in which their services are rendered to the United States. We do not see how the result contended for by the

Solicitor can be reached, without assuming, in the first place, that Congress intended to make a discrimination between the different officers, and then straining the principle of construction to its furthest limits, by assuming, in addition, that the discrimination they intended was of this particular character.

As the simple and obvious construction of the resolution seems to us to be, that the public printer is included within its operation, we shall direct testimony to be taken.

A. O. P. Nicholson *vs.* The United States.

Brief.

Under the joint resolution of the 3d August, 1846, the printing of Congress was done by contract, and let to the lowest bidder. This was changed by resolution approved August 26, 1852, which provided for the election of a superintendent of public printing at a fixed salary, and also for the election of a public printer for each House of Congress, to do the public printing for the Congress for which he may be chosen, and such other printing of the several departments as may be delivered to him by the superintendent. The rates for composition and press-work are fixed by a tariff provided in the resolution; and the certificate of the superintendent as to the amount of labor thus performed was made receivable at the treasury as a full authority for payment of the amount therein stated.

Congress proposed by this change to take this matter into its own custody, and thus secure a more faithful and prompt execution of the public printing. To this end they furnished the material, provided a superintendent, and elected a public printer for a definite term, who was to work under their immediate direction, and be at all times subject to their jurisdiction.

On 20th July, 1854, Congress, acting under the conviction that the compensation theretofore allowed by law to persons in its employment, owing to the increased cost of living, was inadequate, passed a joint resolution for its increase. It is entitled a "Joint resolution to fix the compensation of the *employes* in the legislative department of the government," &c.; and the body of the resolution provides, "that the officers, clerks, messengers, and other employés in the legislative department shall be paid an increased compensation of twenty per cent. upon the compensation now received by them respectively."

The question, whether the public printer is an "officer" or "employé," seems to be one of easy solution.

Office (*officium*) is the function by virtue whereof a man hath some employment in the affairs of another; as of the king, or of another person.—(Cowell.)

And an office is defined by Blackstone to be a right to exercise a public or private employment, and to take the fees and emoluments thereunto belonging.—(2 Comm., c. 3, p. 26.)

One, therefore, who is authorized or commissioned to perform a public duty, is an officer.—(Webster.)

In the case of the United States *vs.* Maurice *et al.*, Chief Justice Marshall says:

"Is the agent of fortifications an officer of the United States? An office is defined to be a 'public charge or employment,' and he who performs the duty of an office is an officer. If employed on the part of the United States, he is an officer of the United States. Although an office is 'an employment,' it does not follow, that every employment is an office. A man may certainly be employed under a contract, express or implied, to do an act or perform a service, without becoming an officer; but if a duty be a continuing one, which is defined by rules prescribed by the government, and not by contract which an individual is appointed by government to perform, who enters on the duties appertaining to his station without any contract defining them, if those duties continue, though the person be changed, it seems very difficult to distinguish such a charge or employment from an office; or the person who performs the duties from an officer."—(2 Brock., 103.)

The office of public printer comes within all the elements of this definition:

1. It is a public charge or employment.
2. Its duties are continuing.
3. They are defined by rules prescribed by the government, and not by contract.
4. These duties continue, though the person may be changed.

The petitioner was elected to fill the place made vacant by the death of Gen. Armstrong. That contingency gave rise to the precise question now under consideration, as will be seen in the debates of the House, on 27th February, 1854:

Mr. DAVIS, of Indiana. I rise to a privileged question. It is known to this body that the public printer of the House of Representatives has died. According to my view of the law authorizing the election of a public printer for the House of Representatives. I conceive that office to be now vacant. I therefore offer the following resolution:

Resolved, That this House will, on to-morrow, at two o'clock p. m., proceed to the election of a public printer for the House of Representatives, to serve during the remainder of the present Congress, in place of Robert Armstrong, deceased.

Mr. JONES. I merely wish to say that I do not agree with my friend who has introduced the resolution. I do not consider that the position of the public printer is an office of this House, or of the government, but that it is a contract to do certain work.

But, sir, if it is the determination of the House to consider it as an office, and that it is now vacant, or that it is in such a position, whether under a contract or office, as now requires the action of this House, I think that we should go into this election on to-morrow, at furthest. To test the sense of the House whether I am right in the estimation of the House or not, I will first, in compliance with the promise I made to the gentleman from New York, (Mr. DEAN,) move the previous question, and then I move to lay the resolution upon the table.

Mr. DAVIS. I will do so. I was remarking that I differed with my friend from Tennessee, (Mr. JONES,) in reference to the view he takes of the character of this law. The act which authorizes the election of public printer, and which was passed during the first session of the last Congress, is in these words:

"*Be it enacted, &c.*, That there shall be elected a public printer for each House of Congress to do the public printing for the Congress for which he or they may be chosen; and such printing for the Executive departments and bureaus of the government of the United States as may be delivered to him or them to be printed by the superintendent of the public printing. The following rates, &c., shall be allowed," &c.

That, as I take it, creates an office, and the printer elected under it is an officer of this House. He is not required to give any bond for the performance of the duties of the office, it is true, but that does not change the principle involved. Sir, he is just as much an officer of the House as the Clerk is, or as the Speaker of the House of Representatives himself is.

Mr. WASHBURN, of Maine. I would ask the gentleman from Indiana, (Mr. DAVIS,) when this law was passed creating a public printer, whether it was not intended to be something more than a mere contract; whether it did not involve the idea of trust and confidence, of personal fitness and qualifications? I contend that it was not to be assignable, and that the benefits of it would not descend to the heirs.

Mr. DAVIS. Certainly.

Mr. WASHBURN. I ask whether that was not the argument used in favor of that law?

Mr. DAVIS. I do not remember what were the arguments used in reference to this matter; I desire nothing further than the act itself to convince me that the public printer is as much an officer of this House as your Clerk, Sergeant-at-Arms, Postmaster, or the Speaker. We did not elect the printing establishment as the public printer. We elected an individual as such officer; and the law provides that the public printing shall be presented to and be done by that person, and not by the establishment, not by the "Union" office. When that individual ceases to live, the office expires with him, and cannot descend by any fair and liberal construction of the law to his heirs, executors, or administrators. I will not detain the House with arguments in reference to this question, for it seems to me to be so clear and palpable a matter that "he who runs may read." In compliance with my promise to the gentleman from New York, (Mr. DEAN,) I renew the demand for the previous question.

The resolution was adopted. Thus the House, in a very solemn manner, decided that the public printer was an "officer," and the same House passed the resolution for the increased compensation of "officers."

The word "employé," borrowed from the French, is the most comprehensive that could be used, and includes all persons employed for the transaction of business.

The rules for the construction of statutes are well ascertained and defined.

In the exposition of a statute, the intention of the legislature may be discerned from different signs; but as a leading clue to the construction to be made is to be collected from the words used, and while, as before stated, it is a fundamental maxim that effect ought to be given to the intention and object of the framers, it must now be added,

in order to give such rule its full signification, that *it must be such an intention as the legislature have used fit words to express.*—(Dwarris, 561.)

When a law is plain and unambiguous, whether expressed in *general* or *limited* terms, the legislature must be understood to mean what they have clearly expressed, and there is consequently no room left for construction.—(United States *vs.* Fisher, 2 Cranch, 358; United States *vs.* Morris, 14 Pet., 46; Bartlett & Waring *vs.* Morris, 9 Port., 266.)

In the language of Redfield, J., "we can only judge of the import and intention of a statute by its terms; any other rule would lead us into endless and fruitless conjecture and hopeless confusion."—(Barker *vs.* Esty, 19 Verm., 131.)

Nor should any force be applied to accommodate the terms of the statute to what may be the supposed intention of the legislature. "If I thought (said Coleridge, J.) the construction we are adopting put any force on the meaning of the act, I should be the last to concur in it; for the longer I sit here, the more I feel the importance of seeking only the meaning of a statute according to a fair interpretation of the words."—(6 A. & E., 7.)

The court, in the discharge of their duty under these well established rules, will not be deterred by arguments *ab inconvenienti*, or by the particular consequence to which its decision will lead. These are generally pressed with more or less vigor; but the courts have held their way, guided by the steady lights of the best adjudications. "I cannot tell (said Paterson, J.) what conseqences may result from the construction which we must put upon the statute; but if mischievous, they must be remedied by the legislature."—(Regina *vs.* Justices Lancashire, 11 A. & E., 157.)

In Rex *vs.* Barham, (8 B. & C., 104,) similar language was held by Lord Tenterden: "Our decision may operate to defeat the object of the statute, but it is better to abide by this consequence than to put upon it a construction not warranted by the words of the act, in order to give effect to what we may suppose to be the intention of the legislature."

In one of the latest cases upon the subject we have the emphatic declaration of Lord Abinger: "We have been strongly pressed with the inconvenience that may result from this construction of the statute. We are not insensible to them, but the only proper effect of that argument is to make the court cautious in forming its judgment. We cannot, on that account, put a forced construction on an act of Parliament."—(Hall *vs.* Franklin, 3 M. & W., 275.)

When the construction of a statute is doubtful, it is admitted that the argument *ab inconvenienti* will have weight, but not otherwise.—(Gore *vs.* Brazier, 3 Mass., 523; Ayres *vs.* Knox, 7 Mass., 306; Putnam *vs.* Longley, 11 Pick., 487.)

Another guide is to be found in the rule, that the words used are to be considered in their natural import, and that every clause and word of a statute shall be presumed to have been intended to have some force and effect.—(7 Mass., 523; Opinion of Justices, 22 Pick., 571; Reynolds *vs.* Baldwin, 1 La. An., 162.)

Having established, as we think, satisfactorily, that the public printer is included in the terms of the resolution, we object to the legality of any reference to the debates or other proceedings in Congress as showing the motives or intention of members. This point is expressly ruled by the Supreme Court of the United States.—(Aldridge *vs.* Williams, 3 Howard, 1.)

On 6th January, 1855, six months after the passage of the joint resolution, and at a subsequent session of Congress, a resolution was introduced into the House of Representatives, declaring that the joint resolution of 1854 "shall *not be so construed* as to increase the pay allowed by previous laws, as to the public printer of the two Houses of Congress." An amendment was offered to include the Superintendent of Public Printing, and adopted; and the resolution, under the previous question, passed the House, was sent to the Senate, and has never been there acted on.—(*Globe,* 205.)

This proceeding has all the ear-marks of hasty legislation. A declaratory resolution to give the true construction of a law is introduced; that resolution is itself admitted to be defective by its amendment in an important particular, and the original, thus amended, adopted without debate, under the pressure of the previous question.

If this resolution could be considered as legitimately bearing upon the discussion, it might remain a question whether it was intended to adopt a new rule from the date of its passage, or control the old one.

On the supposition that it was intended to control the construction of the law *ab initio*, what effect would it have upon this court, even if it had passed the Senate and been approved by the President?

The powers of government are by the Constitution separated and vested in three distinct departments—legislative, executive, and judicial. This separation is regarded as the best safeguard of the rights and liberties of the citizen.

Congress does not possess all power; but only "all *legislative* powers," as specified in the Constitution, with the further power "to *make* all laws which may be necessary and proper for carrying into execution" the powers enumerated. All the power they have, therefore, is "legislative," and to give effect to this, they are authorized to "*make*" laws.

"The judicial power" of the United States is "vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."

It is, therefore, in the power of the legislature to "make" laws; but it belongs to the judiciary to *construe* them.

If Congress could not only "make" a law, but could subsequently direct the courts how they should construe it, the barriers which have been set up by the Constitution would be broken down, and "the judicial power" would be vested in Congress *and* the Supreme Court —(Governor *vs.* Porter, 5 Humph., 165; State *vs.* Fleming, 7 Humph., 152; Planters' Bk. *vs.* Black, 11 Smede and M., 43; De Chastelleux *vs.* Fairchild, 15 Pen., 18; Jones *vs.* Perry, 10 Yerger, 59; 4 Greenleaf, 140; Commonwealth *vs.* Beaumarchaes, 3 Call., 168.)

In the early case of Ogden *vs.* Blackledge, (2 Cranch, 276,) this point was presented by counsel, who was stopped in his argument, the court observing "that it was unnecessary to argue that point."

Coming back, then, to what was the intention of the legislature, as appears upon the face of the law itself, we find ourselves strengthened by the declaration of the mover of the declaratory resolution, who, in introducing it, said: "I will say, if I were proceeding as a public functionary to decide whether these gentlemen were entitled to claim such pay or not, I should hesitate long in construing that resolution before I should decide against them."—(6th January, 1855; *Globe*, 205.)

We have no means of ascertaining the number of those voting for or against this declaratory resolution, or what was their opinion as to its effects.

But not only is the public printer within the words of the statute, but he is also within its spirit.

The increase of compensation did not refer to individuals, but to classes. It was not special, but general. As the cause of the new law was general, so was the remedy. If the public printer be excluded from the provisions of the law, his case will form the solitary exception to the universality of the rule, as applied to the employés in the "legislative department." The cost of living is made up mainly of rents and the price of consumable articles, and these affect the value of labor. Now, rent and wages make up the expenditure of a public printer, and no reason can be assigned why he is not within the same equity that covers other officers and employés.

The objections made at the Treasury Department to pay this claim do not rest upon the denial that the public printer is an officer or employé, but that it was not the intention of the legislature to include him.

1. Because he was elected in December, 1853, for the 33d Congress, whose last session will close the 4th March, 1855; but the resolution fixes the compensation of the officers, &c., from the 1st July, 1853, and continues it up to the 1st July, 1855.

2. Because the public printer is paid for the labor of others employed by him in doing the public printing.

3. Because the public printing amounts to a large sum; and if the resolution had been intended to cover it, it would have been specially provided for.

4. That he is called public printer in the act creating the employment; that he is known by such title, and that this title is not mentioned in the resolution.

5. That the resolution was only intended to embrace officers, &c., with fixed salaries.

The first objection seems to be based upon an incorrect statement of the terms of the resolution. It does not fix the compensation of the officers, &c., from the 1st July, 1853, and continue it up to 1st July, 1855, as is stated; but the language is as follows: "Such increased compensation to commence from the 1st July, 1853; and that a sum sufficient to pay the same to the 30th June, 1855, is hereby appropriated," &c. The duration of the *appropriation* is limited, but not the *compensation*. If it were true, however, that the appropriation limits the compensation, this would not prove that the public printer was so intended to be excepted, because his work after 30th

June would be paid for at a different price from work done prior to that period. The argument proves too much, for it would by the same reason exclude all persons whatsoever from the benefit of the resolution.

Second. It is not true that the public printer is paid for the labor of others employed by him; he is paid for his own labor and enterprise. Congress does not direct the machinery to be used, nor provide for the number of his assistants, nor regulate their pay. All the machinery is his, and all the hands employed are his hands. When his compensation was fixed, the prices of machinery and labor were doubtless brought into the estimate; but wages is affected by the price of living, and fluctuates accordingly; and if this increases largely, the printer would be deprived of all compensation whatever, unless Congress should enlarge it to meet the altered condition of things.

Third and fourth. These objections would be entitled to consideration if the construction of the law was ambiguous, and as aids to others of more weight, but standing alone amount to nothing. If the public printer is excluded because not specifically named, so are numerous others who are admitted to be within the terms of the law. There are but two classes specifically mentioned—"clerks and messengers; but the sergeant-at-arms, door-keeper, postmaster, librarian, &c., are all admitted to be proper recipients under the new law.

Fifth. That some employés receive salaries, and others payment in proportion to the work done, raises no legal distinction. The law does not use the word "salary," but "compensation;" and thus covers this case as well as others. If the same words had been used in reference to the judiciary, would the sheriff, whose services are compensated by fees, be excluded?

The amounts now claimed of the government were due at specified periods, and the refusal to pay them was a wrong and injury to petitioner, which entitles him not only to the payment of these sums, but interest for the detention.—(Opinions of Attorneys General, 1 vol., 268; 2 vol., 463.)

If the law is regarded as so doubtful as to admit of two interpretations, which is with much confidence denied, then the court should adopt that interpretation most favorable to the officer or employé of the government.—U. S. *vs.* Morse, 3 Story, 87.)

P. PHILLIPS,
Pro Pet.

IN THE COURT OF CLAIMS.—No. 19.

ON THE PETITION OF A. O. P. NICHOLSON.

Brief of the United States Solicitor.

The nature of this claim, and the reasons for disallowing it, are concisely and clearly set forth in the following letter from the Secretary of the Treasury:

TREASURY DEPARTMENT,
September 20, 1854.

SIR: On the 20th of July, 1854, Congress passed, and the President approved, a joint resolution entitled "Joint resolution to fix the compensation of employés in the legislative departments of the government, and to prohibit the allowance of the usual extra compensation to such as receive the benefits thereof." Resolved, &c., that the officers, clerks, messengers, and other employés in the legislative department of the government, shall be paid an increased compensation of 20 per cent. upon the compensation now received by them respectively, and the messengers of the House of Representatives shall not receive less than is allowed to the messengers of the Senate of the same class; such increased compensation to commence from the 1st of July, 1853, and the money appropriated to pay the same to the 1st of July, 1855; and no person benefitted by the increased compensation under the act of the 22d April, 1854, to receive increased compensation under the resolution, and the extra compensation usually allowed not to be paid to any one entitled under the resolution.

The printer of the Senate and the printer of the House of Representatives claim 20 per cent. under this resolution for all the printing done, and to be done by them from the 1st of July, 1853, to 1st of July, 1855, as officers and employés of the legislative department, within the words and meaning of the resolution; the printer of the Senate by the accompanying letter, and the printer of the House of Representatives by verbal application.

The act of Congress approved 26th of August, 1852, provides for the appointment and salary of a superintendent of the public printing, viz: the printing for the two Houses of Congress and the executive departments, and prescribes his duty.

The 8th section provides for the election of a public printer for each House of Congress to do the printing for the Congress for which he or they may be chosen, and such printing of the departments and bureaus as the superintendent may put in the hands of their printer.

The bill provides the superintendent shall purchase and furnish the paper for all the printing, and fixes the price of the printing.

The public printers of the 33d Congress were elected under this law, and claim the 20 per cent. in addition to the prices of printing fixed by the act under the aforesaid resolution. They were elected in December, 1853, for the 33d Congress, whose last session will close the 4th of March, 1855; but the resolution fixes the compensation of the officers, &c., from the 1st of July, 1853, and continues it up to the 1st of July, 1855. If the public printers are entitled under the resolution, then the public printer for the last Congress will be entitled to the 20 per cent. on the work done and delivered after the 1st of July, 1853; and the present printers, for all the work done and delivered prior to the 1st of July, 1855, and will not be entitled to it for what shall be done after that time, as the public printer for the last Congress will not be entitled to the printing not done and delivered prior to the 1st of July, 1853.

The public printers, in the compensation received under the act, are paid for the labor of others employed by them in doing the public printing, whilst all others who claim under the resolution are paid for the personal service they render to the legislative department.

The public printing under the act will amount to over $100,000 each Congress, and if it was intended to give 20 per cent. additional compensation to them, most of which arises from the labor of their employés, they should have been named in the act.

The act, if applicable to the public printers, would give them over $20,000, and none of those enumerated in the act over five hundred dollars. They are called public printers in the act providing for their election and compensation, and are known by the name of public printers, but are omitted as such in the resolution.

I am of opinion that Congress intended by the resolution to give the 20 per cent. additional for the personal services of those embraced by it who receive fixed salaries, and did not intend to give to the public printers, whose compensation arose mostly from the labor of others, and fluctuated according to the work done; and that, if Congress had intended the public printers should have the additional compensation, they would not have omitted the cognomen of public printers, and left them to be included by construction, as officers or employés. In my opinion, omitting to name them as public printers in the resolution, when they are named in the act under which they are elected public printers, and generally known as public printers—connected with the fact, the additional compensation would be given them on the labor of others, and that the compensation of all others entitled to the benefit of the resolution is for their own services—is conclusive that Congress did not intend to give the public printers the 20 per cent. They might be construed to be officers within the resolution, or employees within the resolution, but that would be to embrace them by other names when they are not embraced by their own proper name.

I have decided that the superintendent of public printing, and his clerks, are not embraced in the resolution, and now decide the public printers are not embraced in the resolution.

I have not gone into the question whether they do or do not receive inadequate compensation, nor into anything but the language of the resolution, and the character of the services for which the 20 per cent. was given, and for which I think it was not intended to be given. If Congress intended the public printers should have this additional compensation, they will be in session in a little more than two months, and can remedy the wrong this decision will do, by including them by name.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

ELISHA WHITTLESEY, Esq.,
First Comptroller of the Treasury.

The proposition in the brief of the claimant, which seems intended as an answer to the ground taken by the Secretary, that the resolu-

tion applied only to those rendering personal service in the legislative department, is, that he is elected, and that his *duties* and *compensation* are prescribed by law. The circumstance that the public printer is elected is certainly unimportant. That is at present the mode in which he is designated, but formerly it was otherwise; and it may be that, whilst this resolution is in force, the printing may again be given to the lowest bidder, and, if so designated, he would certainly be an officer or employé of the legislative department in the same sense that he is now. The mode in which a person is selected to do particular work does not enter at all into the question of whether the person is an officer or not; that question depends entirely upon the nature of the business, and the relation he bears to the government in connexion with it. The act is entitled "An act to provide for executing the public printing, and establishing the prices thereof, and for other purposes."—(See Acts, 1851–'52, p. 30.) An officer to supervise the execution of the public printing is provided for, and his duties prescribed, in the 2d and 3d sections of the act. The 4th section directs this officer to procure the necessary paper from the "public contractor" and deliver it as required to "the public printer."

"The *public contractor*" is the lowest bidder. "The public printer" was likewise the lowest bidder prior to the passage of the act under consideration, but is now elected, as provided for in the 8th section. He is still, however, paid by the job, as formerly, and the only difference is that the rates of payment are fixed by law. But it is not only impossible to assign any essential difference between his present and former relations to the legislative department, but it is impossible to distinguish between his relations and those of "the public contractor" for paper, and assign any reason which would entitle him to a per centage on the amount of his jobs which will not apply to the public contractor.

They are both required to furnish work according to a certain standard, to be passed on by the superintendent of the public printing, and when either the paper or printing is not conformable to these standards, in the judgment of the superintendent, it is to be rejected, and, in case of failure of either as to time, provision is made for recourse to others. All there is of duty or confidence in relation to this printing, which constitutes the essential element of a public trust, office, or employment, it will be observed, is devolved on the superintendent. He it is who is charged alike with supervising the quality of the paper and printing; he delivers and receives, and is put under bonds for the faithful discharge of his duties.

Neither the printer nor the contractor can be removed or dismissed whilst he fulfills the contract. The stipulated pay could not be diminished, nor could they be made to furnish additional or other paper or printed matter without additional pay. But an officer may be lawfully required to do the additional duties imposed by subsequent laws without entitling himself to additional compensation, however onerous the duty and inadequate the existing rate of compensation.—(2 Story, 202.)

If it had been intended to embrace the printer within the provisions of the act, it would have been done in express words. It cannot be

supposed that an act would be intended to donate to one officer, whom it does not name, more than to all those particularly mentioned. When we remember, also, the recent discussions which had then been had upon the subject of the public printing, and the importance attached to the subject, the rule stated in Woodburns *vs.* Paine, 1 Breese, 294, that a statute which enumerates things or persons of inferior dignity shall not be construed to extend to those of superior dignity is applicable.

It is the *intention* of the legislature which must govern. If the language of the act is explicit, no recourse can or need be had to other proceedings or acts to explain it. But, if not, recourse may be had to other acts and proceedings, and to public events, to gather the intention of the legislature.—(See Aldridge *vs.* Williams, 3 How., p. 24.)

Therefore, the proceedings of 27th February, 1854, quoted in claimant's brief, and those of 6th January, 1855, also referred to, are proper to be considered.—(See, also, act of 3d March, 1855, p. 651, where provision is made for certain officers not included in the resolution.

The printer is not within the equity of the resolution. The rates had been fixed by the next preceding Congress, whilst the salaries of the officers and employés, whose compensation was intended to be increased, were regulated by law of many years standing.

M. BLAIR.

IN THE COURT OF CLAIMS.

A. O. P. NICHOLSON *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

This case, as stated in the petition, is as follows: On the first day of March, A. D. 1854, the petitioner was duly elected public printer of the House of Representatives of the United States, and he then took upon himself the duties of public printer of said House, and hath from thence hitherto performed, and still is performing, the duties required by law to be performed by such public printer. At the time of his election, the compensation of such public printer was fixed and defined by the act of Congress, entitled, "An act to provide for executing the public printing, and establishing the prices thereof, and for other purposes," approved August 26, A. D. 1852; and under and by virtue of that act, the petitioner became entitled to receive from the United States divers large sums of money for services actually rendered and performed by him, his agents, and servants, by virtue of his office of public printer to the House of Representatives.

A joint resolution, approved on the 20th day of July, A. D. 1854, is as follows:

"*Joint resolution to fix the compensation of the employés in the legislative department of the government, and to prohibit the allowance of the usual extra compensation to such as receive the benefits hereof.*

"That the officers, clerks, messengers, and other employés in the legislative department of the government, shall be paid an increased compensation of twenty per cent. upon the compensation now received by them respectively; and the messengers of the House of Repre-

sentatives shall not receive less than is allowed to messengers of the Senate of the same class; such increased compensation to commence from the first day of July, eighteen hundred and fifty-three; and that a sum sufficient to pay the same to the thirtieth of June, eighteen hundred and fifty-five, is hereby appropriated out of any money in the treasury not otherwise appropriated. * * * *." 10 Stat. at L., p. 594, [No. 18.]

Prior to the first day of September, A. D. 1854, the petitioner became entitled, under the resolution just mentioned, to the sum of fifteen thousand dollars, and on or about that day demanded payment thereof at the Treasury Department; but on or about the 25th day of September, A. D. 1854, the Secretary of the Treasury refused to pay the same. Payment was refused, not on the ground that the petitioner had not performed the services for which he charged, but because, as the Secretary alleged, the petitioner was not included and provided for by the joint resolution.

Since that time the petitioner has continued to discharge the duties of his office of public printer, and has to do still further printing, which was duly ordered by Congress, and there is now due him for increased compensation a large sum, which he cannot now fully state; and there will hereafter be due a further large sum for increased compensation, which the petitioner cannot now estimate.

The affidavit annexed to the petition is dated the 23d day of June, A. D. 1855.

The third section of the act of Congress approved August 26, A. D. 1852, provides, that it shall be the duty of the superintendent of the public printing "to receive from the Secretary of the Senate and Clerk of the House of Representatives all matter ordered by Congress to be printed, and from the several chiefs of departments and heads of bureaus all matter ordered by them, respectively, to be printed at the public expense, and to keep a faithful account of the same, in the order in which the same shall be received, in a book or books to be by him kept for that purpose. He shall deliver said matter to the public printer or printers in the order in which it shall be received, unless otherwise ordered by the Joint Committee on Printing." The eighth section of the same act provides, "that there shall be elected a public printer for each House of Congress, to do the public printing for the Congress for which he or they may be chosen, and such printing for the executive departments and bureaus of the government of the United States as may be delivered to him or them to be printed by the superintendent of the public printing." It then prescribes the rates of compensation to be paid for public printing.—(10 Stat. at L., p. 31, 32, ch. 91.)

The first question which naturally presents itself for our consideration is, was the petitioner an officer "in the legislative department of the government" in the sense of the joint resolution of July 20, A. D. 1854? In the opinion heretofore delivered in this case, this question received an affirmative answer. But the point for actual decision then was, whether the taking of testimony should be directed; and we cannot refuse an order for that purpose in any case unless "it

appear to the Court that the facts set forth in the petition *do not* furnish *any* ground for relief." Nor was our attention then drawn to that part of the act of 1852 which requires a public printer to do "such printing for the executive departments and bureaus of the government of the United States as may be delivered to him * * to be printed, by the superintendent of the public printing;" but we looked only to the provision "that there shall be *elected* a public printer for each House of Congress, to do the public printing for the Congress to which he or they may be chosen." We consequently did not advert to the fact that the duties of the petitioner were not confined to the legislative department of the government.

Under the Constitution of the United States, the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments."—(Con. U. S., art. II, § II, cl. 2.) Hence, it is obvious, that the only power of appointment which can be possessed by either House of Congress is such as is provided for in the Constitution itself: no such power can be conferred on either House by law. The Constitution provides that the "House of Representatives shall choose their speaker and other officers."—(Ibid., art. I, § II, cl. 5.) It also provides that "the Vice President of the United States shall be President of the Senate," and that "the Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States."—(Ibid., art. I, § III, cl. 4, 5.) No further provision upon this subject is made by the Constitution in favor of either House. This power, therefore, is confined in the two Houses, respectively, to the appointment of their own officers.

Is a public printer, elected under the act of 1852, an officer of the House by which he is elected? It seems to us that an officer of either House, in the sense of the Constitution, must necessarily be one whose duties are confined to the business of that House. This is plainly expressed in the very terms employed to describe him. It moreover results, of necessity, from the powers and constitution of the two Houses of Congress. The only powers possessed by either are those delegated to it by the Constitution, and those which are given to it by law as necessary and proper to enable it to carry into execution its constitutional powers. Its officers are but the instruments to enable it the more effectually to exercise those powers. It can have officers for no other purpose. Those officers are but its agents, and cannot have powers more extensive than those of their principal. They are but a means to an end, and must be subordinate to that end.

Tested by these principles, a public printer, elected under the act of 1852, is not an officer of the House by which he is elected. His duties are not confined to the business of such House. They extend to the business of the executive department of the government. He is elected

to do not only the public printing for the House by which he is elected, but also such printing as the "several chiefs of departments and heads of bureaus" may respectively order to be printed at the public expense. Both classes of duties, if we may so speak, pertain to him in his character of public printer. He does not perform the one in one character. and the other in another character, but both in the same character, If one be official, so is the other; and, on the other hand, if one be not official, the other is not official.

There can be no doubt that Congress has power to create an office, the duties of which shall be connected with the business of either or both Houses of Congress, and also with the business of the executive department of the government; but it cannot authorize either House to fill it. If no special mode of appointment, consistent with the Constitution, be prescribed by law, then it can only be filled by the President, by and with the advice and consent of the Senate. The office of superintendent of public printing is of that character. His duties relate as well to the business of both Houses of Congress as to that of the executive department of the government; and the statute which created his office does not direct how or by whom it shall be filled. He is, therefore, appointed by the President, by and with the advice and consent of the Senate.

If these views be correct, then it seems to us to be a necessary consequence, either that a public printer under the act of 1852 is not an officer, or that the mode of his appointment is unconstitutional. But if an act of Congress be susceptible of two constructions, one consistent and the other inconsistent with the Constitution, that which is consistent with the Constitution must be adopted. That Congress may provide by law that the public printing necessary for the two Houses of Congress, and for the executive department of the government shall be done by contract at certain fixed rates, and that each House shall elect and thereby contract with a person to do it, there can be no doubt. The act of 1852 is, to our minds, susceptible of this construction. Hence, it seems to us, that a public printer under that act must be regarded not as an officer, but as a mere contractor.

An analysis of the act of 1852, and a comparison of its several provisions with those of the acts and joint resolutions, which were passed at various times prior thereto, would show, we think, still more clearly, the correctness of the conclusion at which we have arrived. We, however, do not deem such an analysis and comparison necessary.

But the petitioner suggests, that in February, A. D. 1854, upon the death of General Armstrong, who was a public printer for the House of Representatives, that House decided that he was an officer thereof, and thereupon filled the vacancy occasioned by his death. That the House of Representatives did, on that occasion, consider that, upon the death of General Armstrong, his place of public printer became vacant, and that they did, thereupon, elect the petitioner to supply it, is true; but upon what ground they so held and acted we have no direct means of determining. The petitioner argues that it was upon the ground that he was an officer of the House of Representatives, and refers us to the debate which took place at that time. We cannot, however, look to the debate for this purpose.—(Aldridge

vs. Williams, 3 How. R., 24.) If we could, it would aid us but little. Only three members spoke upon this point. One of them expressed the opinion that General Armstrong was an officer of the House of Representatives. Another was of a different opinion. The third does not expressly declare his views, but it is fairly to be inferred from his remarks that he concurred with the latter. What were the views of the other members we have no means of ascertaining.

If it were true that the action of the House of Representatives could not be justified upon any other ground than that General Armstrong was an officer of that House, then it would necessarily be referred to that ground, and entitled to very respectful consideration. But it was equally proper, whether he was an officer of the House or a mere contractor. This contract was of a *personal* nature, and his death determined it just as absolutely as if it had been an office.—(1. Parsons on Con., 2d ed., 111.)

Our opinion is that the petitioner was not an officer "in the legislative department of the government" in the sense of the joint resolution of July 20, A. D. 1854.

2. It is not pretended that the petitioner was either a clerk or messenger. We have now, therefore, only to consider whether the petitioner was an employé "in the legislative department of the government" in the sense of the joint resolution. It has been argued with much force by the Solicitor that the term "employé" being general, and following the particular words "clerks" and "messengers," it is to be confined to employés, *ejusdem generis*, and was meant to embrace only such employés as received compensation for direct personal services. He refers to the rule, that where, in a statute, general words follow particular ones, they are construed as applicable only to subjects *ejusdem generis*.—(Sandinam *vs.* Breach, 7 B. and Cr., 96.) The rule is founded in sound principle. It proceeds upon the hypothesis, that, as the legislature first enumerates certain particular cases, they had in their minds only those cases and others of a *like kind*. Hence the propriety of not extending a general term, which may follow the particular terms used by them, beyond cases of a like kind with those particularly mentioned. The case before us, if the petitioner can be considered an employé in any sense, is an apt illustration of the justice of this rule of construction. This will appear from a consideration of the nature of the work done by a public printer, the means by which he does it, the mode in which he is compensated, and the large amount of money required for that purpose. These abundantly show that the case of a public printer is vastly more important than any specially named in the joint resolution; and hence would have occupied a much more prominent place in the minds of the legislature, if it had been intended to provide for it. The amount now claimed by the petitioner for printing done for the Senate and House of Representatives from July 1, A D. 1853, till May 15, A. D. 1856, is $27,663 99, the same being 20 *per centum* upon $138,319 97, the amount of compensation which he has actually received therefor. It is not to be supposed that a case like this would have been left to be embraced by the general terms "other employés," used in a resolution in which it was deemed necessary to name particularly "clerks"

and "messengers." A construction which would give such an effect to those terms, would not, we think, be in accordance with the intention of the legislature. They cannot, in the connexion in which they stand in the joint resolution, be justly construed to embrace a public printer of either House of Congress. If it had been intended to embrace him, other language would have been employed. He, too, would have been especially named.

But, moreover, the phrase "other employés in the legislative department of the government," though general, is yet not broad enough to embrace the case of the petitioner. He was, as we have seen, a public printer, elected by the House of Representatives, and *as such* required to do, not only the public printing for that House, but also such printing as the "several chiefs of departments and heads of bureaus" might respectively order to be printed at the public expense. If, therefore, it be conceded that he was an employé, still to say that he was an employé in the legislative department of the government does not adequately describe him. He is, therefore, not within the words of the resolution. Nor does it seem to us that he comes within its spirit and intent. The resolution was passed because the officers and employés in the legislative department of the government, under the laws previously in force, did not, in the opinion of Congress, receive adequate compensation ; and the legislature cannot justly be considered as having in contemplation any others than those who are plainly described by the terms employed.

It is a circumstance worthy of notice, that our construction of the joint resolution has been sustained by both Houses of Congress. On the 6th day of January, A. D. 1855, the House of Representatives passed a resolution declaring that the joint resolution was not intended to embrace the public printer. And by the act approved March 3, A. D. 1855, ch. 175, it is provided that the superintendent of the public printing "and the clerks and messenger in his office, and the librarian and assistants and messenger in the library of Congress, shall be entitled to, and shall receive the benefits of, the joint resolution, approved July twentieth, eighteen hundred and fifty-four, fixing the compensation of the legislative employés of the government, in the same manner and to the same extent as officers of the same grade in the legislative department."—(10 Stat. at L., p. 651.) This act does not declare that the joint resolution shall be *so construed* as to embrace the officers and employés named in the act, but by force of its own terms *extends* the benefits of the resolution to them. Congress were, therefore, of the opinion, that the joint resolution did not embrace those officers and employés. This opinion corresponds with our construction; for, if the superintendent of the public printing was not an officer in the legislative department of the government in the sense of the joint resolution, there is no principle, we think, on which the public printer could be either an officer or employé in that department in the sense of that resolution. This is plain from the nature of their duties respectively.

Our opinion is, that the petitioner is not entitled to relief

IN THE COURT OF CLAIMS.

GILCHRIST, C. J. The only question in this case is a question of law; and for the following reasons I adhere to the opinion formerly delivered, that the claimant has a legal cause of action:

The joint resolution of August 3, 1846, (9 Statute at Large, 113,) provided that the printing of Congress should be let to the lowest bidder, and should be done by contract. By the act of August 26, 1852, (1st session 32d Congress, page 30,) this resolution was repealed.

The 2d section of this act provided that there should be a superintendent of the public printing. The 8th section enacted that "there shall be elected a public printer for each House of Congress, to do the printing for the Congress for which he or they may be chosen," &c., and it stated also the rates of compensation for such printing as might be ordered by Congress.

By the 2d section of the act of April 22, 1854, (1st session 33d Congress, page 276) it was enacted that 20 per cent. be added to the pay of each of the messengers, packers, laborers, and watchmen of the different executive departments of the government, and to certain other persons specified therein.

On the 20th July, 1854, (1st session 33d Congress, page 594,) it was provided by a joint resolution that "the officers, clerks, messengers, and other employés in the legislative department of the government, shall be paid an increased compensation of 20 per cent. upon the compensation now received by them respectively." This increased compensation was to commence from the 1st day of July, 1853, and a sum sufficient to pay it to the 30th of June, 1855, was to be appropriated. It was provided, also, that no person whose compensation was increased by the act of April 22, 1854, should be benefitted by the resolution.

On the 1st day of March, 1854, the claimant was elected public printer of the House of Representatives, and his allegation is, that he is an officer and employé in the legislative department of the government, and included and provided for by the resolution.

The question, therefore, is, whether he be such an officer or employé as the resolution contemplates. As it is very evident that he is neither a "clerk" nor a "messenger," he must be either an "officer" or an "employé," in order to be entitled to the compensation he seeks.

The word "employé" has been adopted from the French, and considerably used by us. It is a noun, the meanings of which are defined to be, "1. person employed; person in another's employ. 2. (pub. admn.) clerk." It is very difficult to imagine who are properly included in the class of employés, if the public printer be excluded. He is a person employed in the legislative department for a certain purpose, as much so as any other person can be said to be employed in any department. The term is generic, and is so used in the act, for the words are "officers, clerks, messengers, and other employés," thus applying the word "employé" to each of the classes specifically

mentioned. There is no room for any etymological refinements. The natural and plain meaning of the word is such as to include the claimant.

But the claimant is also an "officer" in the legislative department. We need go no further than the language of Chief Justice Marshall to be satisfied of this. In the United States *vs.* Maurice, (2 Brock., 103,) he says, "an office is defined to be a public charge or employment, and he who performs the duty of an office is an officer. If employed on the part of the United States, he is an officer of the United States * * If a duty be a continuing one, which is defined by rules prescribed by the government, and not by contract, which an individual is appointed by government to perform, who enters on the duties appertaining to his station without any contract defining them, if those duties continue though the person be changed, it seems very difficult to distinguish such a charge or employment from an office, or the person who performs the duties from an officer."

There is a rule to be applied in the construction of statutes which is familiar to the lawyer as established by authority, and which is recommended alike to him and all other persons by its practical good sense and necessity, and this is, that the meaning of a statute is to be ascertained from the language used, and not by inquiring of the individual members of the legislature what they intended by enacting the law. In the case of Aldridge *vs.* Williams, (3 Howard, 24,) the court say: "In expounding this law the judgment of the court cannot, in any degree, be influenced by the construction placed upon it by individual members of Congress in the debate which took place on its passage, nor by the motives or reasons assigned by them for supporting or opposing amendments that were offered. The law, as it passed, is the will of the majority of both Houses, and the only mode in which that will is spoken is in the act itself, and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, and looking, if necessary, to the public history of the times in which it was passed." If Congress pass a law, the natural import of which is different from the effect intended to be given to it by those who voted for it, the only safe rule, nevertheless, is to take the act as it stands, as conveying the intention of Congress. If the law be defective, it can be remedied only by subsequent legislation. This general principle is too well and too widely established to need a reference to authorities to sustain it at this late day. In this case the word "officer" and the word "employé" are terms of the most general and comprehensive character. There is nothing in the resolution to modify them or to limit their application to officers or employés of any particular description. If the claimant can fairly be considered as an "officer" or an "employé" it is sufficient. There may be various classes of persons coming within these applications, but the resolution does not define any particular class to which the claimant is to belong in order to be entitled to the increased compensation. There is nothing inconsistent with other acts of Congress in holding that the public printer is embraced by this resolution. It may or may not be inexpedient that he

should be included, and different opinions may have been entertained in Congress as to the propriety of including him; but with such considerations we have nothing to do, our duty being to expound the law and not to make it. Where the language of an act is explicit, and where a person, like the public printer, is appointed to perform certain duties in the legislative department, it is extremely difficult, unless we go beyond the resolution to ascertain its meaning, to state the particular reasons why he is *not* an officer or employé. When it is said that the increased compensation was intended only for those who received fixed salaries for purely personal services, we are constrained to answer, that if such were the intention of Congress, they have used no words to indicate it; and that we look in vain for any authority to make such a discrimination between different classes of officers depending upon the manner in which their services are rendered to the United States. I do not see how the result contended for by the Solicitor can be reached without assuming, in the first place, that Congress intended to make a discrimination between the different officers, and then straining the principle of construction to its furthest limit, by assuming, in addition, that the discrimination they intended was of this particular character.

The provision in the 3d section of the act of 1852, to which reference is made in the opinion of the majority of the court, does not seem to me to affect the position of the claimant as an officer in the legislative department. A public printer is elected, whose chief and most important duty is to the body by which he was elected, and for the promotion of whose business he was appointed. For reasons, whose force will readily be appreciated, it was convenient that all the printing which was to be done at the public expense should be performed by one person. It is clear that the two Houses of Congress are by the Constitution to appoint their own officers. The only objection to considering the public printer as an officer of the legislative department is, that by law he is required to do certain printing for the executive departments. But this only superadds to his other duties the duty of printing for the executive departments, without, as it seems to me, in any degree affecting his former position. He is none the less a legislative officer because he is bound to perform the same duties for the executive departments which he renders for the legislative. If the duties which he is bound to perform to the different departments were different in their character, there might be some show of reason in making a discrimination as to the character in which they were performed; but as long as his duties are all of the same description, I cannot perceive any reason for calling him a legislative officer as to one part of his duties and an executive officer as to the other part.

I do not understand that when a law has been enacted, subsequent declarations of the makers of the law are legitimate evidence to aid in the construction of such law. A law declaratory of the meaning of a statute cannot affect rights acquired under such statute. It can operate only as a new law from the time of its passage. Still less can the declarations of one House be received as competent evidence. These positions I take to be well recognized and familiar to every

awyer. I suppose the only question to be, what is the meaning of he law as it stands upon applying to it the received rules of construction. It is a reasonable presumption that Congress meant to express the ideas which that language is calculated to convey. If hey have not succeeded in accomplishing this, the remedy, wherever lse it may exist, certainly does not belong to a tribunal whose duty is to declare the law and not to make it.

5TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 217.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1858.—Referred to the Committee on claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

JOSHUA J. GUPPEY, county judge of Columbia county, Wisconsin, as trustee for the settlers and occupants of "Portage City," *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this first day of April, A. D. 1858. [L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

COURT OF CLAIMS.

Petition.

JOSHUA J. GUPPEY, county judge of Columbia county, Wisconsin, as trustee for the settlers and occupants of "Portage City," *against* THE UNITED STATES.

Your petitioner, Joshua J. Guppey, respectfully represents, that he is a citizen of the county of Columbia, in the State of Wisconsin, and that on the 1st day of January, 1851, he was, and ever since that

time has continued to be, and now is, county judge of the said county of Columbia, duly elected and qualified according to the laws of said State of Wisconsin, and that as such county judge, and as trustee for the settlers and occupants residing on the west half of the southwest quarter, the northeast quarter of the southwest quarter, and lots two and three of section number five, in township number twelve north, of range number nine east, in the county of Columbia, aforesaid, and in the Menasha land district, Wisconsin. Your petitioner claims title for the said settlers and occupants of the said tracts of land, now known as "Portage City," under the act of Congress of May 23, 1844, entitled "An act for the relief of citizens of towns upon the lands of the United States under certain circumstances, (332 United States Statutes at Large, vol. 5, page 657,) and that the State of Wisconsin claims title to the same lands under the act of Congress entitled "An act to grant a quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and to connect the same by a canal in the Territory of Wisconsin," approved August 8, 1846.

The land in dispute was a part of the lands comprised within the limits of the "Menomonee Cession," and belonged to and was occupied by the Menomonee tribe of Indians, until the treaty of Lake Pow-aw-hay-kon-nay, between the United States and the said tribe of Indians, made on the 18th day of October, 1848.—(See vol. 9 United States Statutes at Large, page 952.)

By the second article of the said treaty, the said Menomonee tribe of Indians agreed to sell and relinquish "all their lands in the State of Wisconsin, wherever situated."

By the eighth article of the treaty, the said Indians were permitted, if they desired so to do, to remain on the lands thus ceded for the period of two years from the date of the treaty (October 18, 1848,) and until the President should notify them that the same were wanted.

And by the tenth article of the treaty, it was to be binding on the contracting parties as soon as it was ratified by the United States.

The treaty was accordingly ratified by the President and Senate on the 23d day of January, 1849, and from that day became binding upon the parties to it.

The Indians were never notified by the President that these lands were wanted by the United States; but prior to the 1st day of June, 1852, they were, by mutual consent, removed to and concentrated upon a small portion of the lands ceded by the said treaty, lying near the falls of Wolf river, in the said State of Wisconsin, and from that time ceased to occupy the portion in dispute.—(See President's message and accompanying documents, 1852 and 1853, part 1, page 325.)

A portion of the land so ceded by said Indians, of which the tracts in dispute formed a part, were surveyed under United States authority in the year 1851, and that portion in dispute was settled and occupied as a "town site," as early as the fall of 1849.—(See statement of surveys from General Land Office, in appendix marked exhibit A, hereto annexed and made a part of this petition.)

An application was then made by your petitioner as judge of the county court in and for the county of Columbia, and State of Wisconsin, to enter the aforesaid tracts of land for a "town site," as trustee

for the settlers then residing thereon, under and in pursuance of the provisions of the act of Congress of May 23, 1844, at the land office at Green Bay, Wisconsin, during the winter of 1851–'52, which was rejected by the local land officers, and an appeal taken by your petitioner to the General Land Office, when the opinion of the register and receiver was affirmed by the then commissioner, Mr. J. Butterfield, for the reason, as he said, that the application of your petitioner was premature, as the land applied for formed a part of the Menomonee cession, which would not become public land under the treaty until after the 1st of June, 1852.

The Commissioner, nevertheless, adds, in the same letter, by way of instruction, as follows: "On the point, however, involved in this case, you are hereby instructed that after the 1st day of June next (June 1, 1852,) upon application being made by the proper authority, as now, with similar testimony accompanying the same, and with the following additional evidence, you would be authorized by the law of May 23, 1844, to permit the entry of every legal subdivision included in the town, to the extent of three hundred and twenty acres."—(See letter of Commissioner Butterfield to the register and receiver of land office at Green Bay, of April 9, 1852, as per exhibit marked B hereto annexed and made a part of this petition.)

On the 1st day of June, 1852, the day the Indian title to these lands became extinct by the terms of the treaty, in consequence of their removal, your petitioner, as trustee aforesaid, made a second application at the same United States land office to enter said lands, for the use and purpose aforesaid, in pursuance of the aforesaid letter of Commissioner Butterfield, of the 9th of April, 1852, and accompanied his said application with such additional testimony as was required by the letter from said Commissioner, when the entry was allowed by the register and receiver at the Green Bay land office, of the lands heretofore described, together with other lands (lots 5 and 6, on section 8, in the same township and range,) which were also settled upon and occupied as a part of said town site, as per duplicate receiver's receipt No. 15,781, dated June 1, 1852.—(See a true copy of said receiver's receipt, hereto annexed, marked exhibit C, which is hereby referred to and made a part of this petition. See also a plat of the town site of Portage City, introduced in evidence by your petitioner on his application to enter the same, June 1, 1852, now on file in the office of the Secretary of the Interior, or the General Land Office, to which your petitioner begs leave to refer and introduce as a part of his petition.)

And your petitioner further shows, that after the said entry had been thus made, agreeably to the instructions of the Commissioner of the General Land Office, your petitioner proceeded, as trustee, to resurvey and plat the said town site called "Portage City," and held a special term of the said county court of Columbia county, for the purpose of adjusting the conflicting claims thereto; and after such adjustment, proceeded to execute deeds of conveyance to the settlers, according to their respective rights, as trustee as aforesaid, at an expense to said inhabitants of not much less than the sum of one thou-

sand dollars. See the petition of your petitioner to the honorable Commissioner of the General Land Office, dated December 22, 1852.

There are about nine hundred lots included in said town site, many of them now of considerable value, and were occupied by more than twelve hundred inhabitants at the time of making the aforesaid entry on the 1st of June, 1852.

Many expensive buildings had been erected previous to said entry, and subsequent thereto; and after the making and executing the trust deeds by your petitioner, purchases were made of many of the lots so deeded, at large prices. The purchasers have in good faith proceeded to erect expensive buildings thereon, both for the purposes of business and residence, with the fullest confidence and assurance of having a perfect title to their property, inasmuch as the tracts upon which their lots were situated were entered before any other appropriation had been made of them, under special instructions from the General Land Office, and, as they believe, in conformity with law.

The claim on the part of the State of Wisconsin is as follows:

On the 8th of August, 1846, there was granted to the State of Wisconsin, by act of Congress of that date, on the admission of such State into the Union, for the purpose of improving the navigation of the Fox and Wisconsin rivers in the Territory of Wisconsin, and of constructing a canal to unite said rivers at or near the portage, a quantity of land, equal to one-half of three sections in width, on each side of said Fox river and the lakes through which it passes, from its mouth to the point where the Portage canal shall enter the same, and on each side of said canal, from one stream to the other, reserving the alternate sections to the United States, to be selected under the direction of the governor of said State, and such selection to be approved by the President of the United States.

The second section of the same act provides, "that as soon as the Territory of Wisconsin shall be admitted as a State into the Union, all lands granted by said act shall be and become the property of said State, for the purpose contemplated by said act, and no other;" provided, "that the legislature of said State shall agree to accept said grant upon the terms specified in the act."—(See United States Stat. at Large, vol. 9, page 83, sections 1 and 2.)

The State of Wisconsin was admitted into the Union on the 29th of May, 1848, and formally accepted the above-mentioned grant of land for the improvement of the Fox and Wisconsin rivers, by act of the legislature of June 29, 1848.—(See Revised Statutes of Wisconsin, page 765.)

At the time of the passage of the act of Congress of August 8, 1846, by which the grant of lands aforesaid was made to the State, a greater part of that portion of land lying west and north of Fox river was occupied and claimed by the Menomonee tribe of Indians, and their title and occupancy was not finally extinguished until the 1st of June, 1852, as aforesaid, by their removal from the lands.

On the 8th day of July, 1852, the tracts of land in controversy, together with a long list of other lands, were selected by Hon. Leonard J. Farwell, then governor of Wisconsin, under the supposed provisions of said grant made by the act of Congress of August 8, 1846,

as aforesaid, subject to the approval of the President; the selection of the said land in controversy having been made by the said governor *after* the aforesaid entry of the town site of Portage City by your petitioner, as aforesaid.

On the 28th of August, 1852, the President of the United States approved of the aforesaid selection of land now in controversy as made by the said governor, in ignorance of its being in conflict with the entry of these tracts in section 5, township 12 north, of range 9 east, for the inhabitants of Portage City, as the returns of sales from the land office at Green Bay, for the month of June, 1852, were not received at the General Land Office at Washington City until September 4, of that year, several days subsequent to said approval; which said approval of the President was made by him "subject to any right which may exist at the date of the approval."—(See letter of Commissioner to Secretary of the Interior, dated August 28, 1852.)

And your petitioner further shows, that subsequent to this approval by the President, and about the 15th day of November, 1852, the register of said land office at Green Bay, Wisconsin, in pursuance, as it was claimed by him, of a circular from the Commissioner of the General Land Office, issued in September, 1852, interfered with your petitioner's said entry, by offering and selling at public sale on that day that part of town site situated upon said section No. 8 to one John Fitzgerald, and that as soon as your petitioner was apprized of said interference with his said entry so made as aforesaid, he, by his said petition to the Commissioner of the General Land Office, in which your petitioner fully and truly stated and set forth all the facts relating to his said entry, and the cancelling of, or interference with the same, so far as the same had come to his knowledge, prayed that his said entry might be examined into and approved, and a patent issued to him for the same, as will be seen by the correspondence between the Hon. John Wilson, then Commissioner of the General Land Office, and the register and receiver of the Menasha land office, formerly Green Bay land office, in July, 1853, and April, 1854. The said Commissioner Wilson came to the conclusion that the entry made by your petitioner was good and valid as to that part which was situated on said section 8, but erroneous, for as much as was situated on section 5, which had been selected by the governor for the State of Wisconsin; and he thereupon directed the certificate of purchase No. 15,781, which had been issued by the register of the land office at Green Bay, dated June 1, 1852, to your petitioner, in trust for the inhabitants of Portage City, to be cancelled, and a new certificate of the same number issued in lieu thereof for lots 5 and 6 in section 8, township 12 north, of range 9 east, upon which a patent was issued to your petitioner on the 28th of April, 1854—the entry for the remainder of the tracts as embraced in the original certificate of purchase being considered as rejected. See original certificate of purchase, with a memorandum upon its face that a new certificate had been issued in lieu thereof for lots 5 and 6, section 8, township 12 north, of range 9 east; a copy of which is hereunto annexed, marked exhibit D, and made a part of the petition.

In a letter written by the Commissioner of the General Land Office to the register and receiver at Menasha, Wisconsin, of February 14,

1853, he uses this emphatic language as to that portion of the entry for which he directs a new corrected certificate to be issued, to wit: "This office is clearly of opinion that the lots 5 and 6, of section 8, in township 12 north, of range 9 east, were legally sold, on the 1st of June, 1852, to Joshua J. Guppey, in trust, &c., under the act of 23d of June, 1844." Thus admitting that the act of May 23, 1844, was fully in force in that part of the country, and would have applied to the tracts rejected also, had it not been for the law of August 8, 1846, making the grant to Wisconsin; as the correspondence referred to shows that the Commissioner placed his rejection of the tracts entered by your petitioner, in section 5, upon the ground that the title of the State of Wisconsin, vested in the odd-numbered sections, from the passage of the act of August 8, 1846, making the grant; and that any settlement after that time could not divest the State of rights thus acquired.—(See letters of late commissioner to the register and receiver at Menasha, Wisconsin, dated July 30, 1853, and April 28, 1854, marked as exhibits E and F, points annexed to and made a part of this petition.)

He further states, in his letter of February 14, 1853, that at the time of giving instructions to allow the entry of the town site of Portage City, under the act of May 23, 1844, the books of the office were not so prepared as to indicate the facts subsequently disclosed, that the grant to the State of Wisconsin, by the act of August 8, 1846, for the improvement of the Fox and Wisconsin rivers and canal, included section 5, as one of the odd-numbered sections within three miles of said rivers," &c.

In giving this construction to the act of 1846, the Commissioner assumes that the odd-numbered sections within the limits specified in the act, from which the selections were to be made by the governor, to wit: "A quantity of land, equal to one-half of three sections in width, on each side of Fox river, and the lakes through which it passes from its mouth to the point where the Portage canal shall enter the same, and on each of said canals, from one stream to the other," were specifically granted to the State, when no such description or designation had been made by the terms of the grant, and when, in point of both fact and law, the governor had as much right to select from the *even* as from the odd-numbered sections.

Your petitioner respectfully submits that the State had no particular right to the odd-numbered sections until they were made certain and distinguishable from other lands, by the extinguishment of the Indian title, the survey, the selection by the governor, and approval by the President. This grant to the State was an executory grant, and a distinction has always been taken by the courts between grants that are *executed* and such as are *executory* and require subsequent acts of performance to perfect them. An executed grant is where no subsequent acts are required to be performed by the parties to it, or either of them to render the grant immediately operative, specific, and effectual for the puposes intended by it. Whereas an executory grant requires subsequent acts to be performed to give it life and effect, and which must be performed, especially where by its terms an option is given to the grantee, as in the case of the grant to the State of Wis-

consin, according to such terms, in all that is requisite to the completion of such grant, before the absolute title can vest under it.

This principle of law was maintained by the decision of the Supreme Court of the United States in the case of Rutherford *vs.* Greene's heirs, reported in 2d Wheaton's Reports, 196, and re-examined and fully sustained in the very recent case of John Charles Frémont *vs.* The United States, decided at the December term of said court, in 1854, and reported in Howard's Reports, page 542.

The General Land Office has also in its practice favored this doctrine to a considerable extent, in regard to the disposition of the lands within the boundaries of the district of country from which the State of Wisconsin was authorized to make her selections, by permitting the odd as well as the even-numbered sections to be entered by individuals. after the date of the grant in 1846, and the admission of Wisconsin into the Union as a State, in 1848. According to the letter of Commissioner Hendricks, dated General Land Office, May 30, 1856, he says that, in addition to this entry, as made by your petitioner for the inhabitants of Portage City, under the above recited instructions of Commissioner Butterfield, "that, since the passage of the act of Congress, approved August 8, 1846, granting land for the improvement of the Fox and Wisconsin rivers, there has been a large quantity of land sold and otherwise disposed of, in the 'odd-numbered sections,' within the limits of said grant, and subsequent to the act of May 29, 1848, (admitting Wisconsin into the Union,) as shown by the books and records in his office," and then goes on to recite a number of the tracts by description, which have been thus sold.—(See exhibit G, hereto annexed and made a part of this petition.)

It also appears by the records of the General Land Office that odd-numbered section No. 33, township 13 north, of range 9 east, within said limits, had been permitted to be selected, and added to the "military reservation" at Fort Winnebago for government uses; and that, notwithstanding its subsequent selection by the governor of the State under the grant, it had been stricken from the list of selections when it was presented to the President for his approval—and the right of the United States to this 33d odd numbered section now appears to stand unquestioned.

Your petitioner further shows, that he has never made application for, or withdrawn any portion of purchase money paid by said settlers and occupants for said lands, and that the same is now in the possession of the United States.

And your petitioner further shows that, on the 18th day of June, 1856, he made application to the Hon. Thomas A. Hendricks, then and still being the Commissioner of the General Land Office, to open and re-examine this case, and reverse that portion of the said decision of his predecessor, the Hon. John Wilson, by which your petitioner's said entry was cancelled as to that portion of the lands within said section No. 5, and to reinstate and confirm said entry; and that upon such application, and a full examination of the case, the said Commissioner Hendricks, on the 30th day of June, 1856, decided that your petitioner's said entry ought to be reinstated, and a patent for said lands issued to him. And in a letter of that date, addressed to

the Hon. R. McClelland, then Secretary of the Department of the Interior, in which letter he reported this case to the said Secretary for his decision thereon, he recommended "that the Executive be requested to revoke his said approval, so far as the lots or subdivisions in section 5, township 12 north, range 9 east, are concerned, in order that proper steps may be taken to reinstate the entry of the town, so that the certificate may stand as originally issued on the 1st day of June, 1852, and a patent under the law of 1844 be given for the lands in controversy."—(See copy of said letter, exhibit H, hereto annexed, and made part of this petition.)

And your petitioner further shows, that the said Secretary of the Interior, on the 23d day of July, 1856, submitted said case to the Hon. Caleb Cushing, then Attorney General of the United States, for his opinion upon the legal questions arising on the same; and that on the 22d day of December, 1856, the said Attorney General presented to the said Secretary his conclusions in the case, adverse to the rights and claims of your petitioner, which was adopted by the said Secretary, and your petitioner's said application denied.—(See copy of the letter of the Secretary to the Attorney General, exhibit marked I, hereto annexed, and made part of this petition.—(See also the opinion of the Attorney General, marked exhibit K, and the final letter of the Secretary of the Interior to the Commissioner of the General Land Office, adopting the opinion of the Attorney General, as a *finale* of the case, marked exhibit L; both of which are annexed hereto, and made a part of this petition.)

Your petitioner further represents, that he is informed and believes that the Secretary of the Interior, in adopting the opinion of the Attorney General, did not regard it as advisory merely, but as absolutely conclusive, under some instruction or opinion of the then President of the United States to that effect; and that, consequently, in adopting it, he did so in reference to that understanding or instruction, without any further examination or consideration of the subject, or with a view to any other decision than that indicated by the opinion of the Attorney General.

Your petitioner further represents, that his attorney, R. M. Young, submitted an argument to the Attorney General, in which he presented three distinct questions for his determination as to the merits of the controversy, to wit:

1. Where a grant of lands like the present is made to a State for the improvement of rivers and the construction of a canal, before the Indian title is extinguished, when does the title vest in the State—from the date of the grant or from the time the Indian title is extinguished?

2. Where a similar grant is made to a State, before the public lands are surveyed, from which such grant is to be taken, will the title vest in the State until the surveys are made, so that they can be designated from the other lands?

3. Whether it is not necessary, also, before the title can vest in the State, that the lands should have been selected by the governor, and that selection approved by the President?

The opinion of the Attorney General, it will be seen, assumes that

the title to the State in the case under consideration, vested from the date of the grant in 1846, or from the acceptance of the grant by the State in 1848, so as to secure to the State the title to the odd sections, which were not selected by the governor until 1852.

This opinion, your petitioner respectfully contends, is contrary to law, as settled in the cases heretofore referred to, and as recently determined by the Supreme Court of the United States, in the cases of Gaines *et al. vs.* Nicholson *et al.*, 9 Howard's Reports, 356 to 366; and Cooper *vs.* Roberts, 18 Howard, 173 to 182.

These cases, it will be seen, and referred to in the argument submitted to the Attorney General, were the authorities chiefly relied upon for a favorable decision upon the main questions submitted as aforesaid, but are nowhere referred to in his opinion.

And your petitioner further shows, that in May, 1857, he applied to the Hon. Jacob Thompson, the present Secretary of the Department of the Interior, to open and review said case, and reinstate your petitioner's said entry of said lands, and accompanied said application with the plat of said town, and the application and proofs originally made by your petitioner before the land office at Green Bay, and all the papers, correspondence and evidence touching your petitioner's said entry and claim, and all proceedings thereon, (except your petitioner's duplicate receiver's receipt for said lands, issued to him on the said 1st day of June, 1852, which he still holds and has in his possession;) and that Secretary Thompson refused to entertain said application, in compliance, as he said, with a general rule of the department, that the decisions of his predecessors would be considered as *res adjudicata*, and whether the decision was *fas aut nefas*, would not be reopened for further investigation.

And your petitioner represents that the lands claimed by him, as aforesaid, have not been certified by the Commissioner of the General Land Office, under the seal of the office, according to the provisions of the act of Congress, entitled "An act to vest in the several States and Territories the title in fee of the lands which have been or may be certified to them," approved August 3, 1854, (see 10 Statutes at Large, p. 346,) and that said lands are still under the control of the Executive, the legal title thereto being still in the United States.

And your petitioner says, that the said settlers and occupants of said lands, and your petitioner as trustee for them, are the sole occupants, and only persons interested in the same.

And no action has been had upon said claim in Congress, nor any of the departments, except that above stated.

Your petitioner represents that the plat of said town, and the application and proofs originally made by your petitioner before the land office at Green Bay, and the papers, correspondence, and evidence, touching your petitioner's said entry and claim, upon which he relies in part for the favorable judgment of this honorable Court, are not allowed by the said office or department to be withdrawn therefrom by your petitioner, nor any person by him thereunto authorized. He therefore prays this honorable Court to make a special order, calling upon the said General Land Office or Department of the Interior for said plat, application, and proofs, papers, correspondence and evidence,

to be delivered to the clerk of this Court, to be used upon the hearing and determination of this case.

JOSHUA J. GUPPEY,
Trustee and County Judge.

By his attorneys, R. M. YOUNG & L. S. DIXON.

EXHIBITS.

The following are the exhibits referred to in the foregoing petition:

Exhibit A.

The surveys of that section of country along Fox river, and the lakes through which it passes, between Portage City and the mouth of said river where it empties into Green Bay, from which the State of Wisconsin was authorized to make the selection under the act of August 8, 1846, were made at different times, from 1834 to 1852, inclusive, and were approved as follows:

Those on the southeasterly or right bank, in the years 1834, 1835, and 1836.

And on the northwesterly or left bank, in the years 1846, 1851, and 1852.

Except in townships 18, 19, and 20, of ranges 16, 17, and 18, which seem to have been approved in 1838, particularly as follows:

Township 12 N., range 8 E., east of Wisconsin and Fox rivers, August 13, 1834, and March 30, 1835.
Township 12 N., range 9 E., west of Wisconsin and Fox rivers, May 20, 1846.
Township 12 N., range 9 E., west of Fox river and on Menomonee cession, November 8, 1851.
Township 13 N., range 9 E., east of Fox river, August 13, 1834.
Township 13 N., range 9 E., west of Fox river, November 8, 1851.
Township 14 N., range 9 E., east of Fox river, August 13, 1834.
Township 14 N., range 9 E., west of Fox river, November 8, 1851.
Township 15 N., range 9 E., south and east of Fox river and Buffalo lake, August 13, 1834.
Township 15 N., range 9 E., north and west of Fox river and Buffalo lake, March 31, 1852.
Townships 14 and 15 N., range 10 E., south of Fox river, August 13, 1834.
Townships 14 and 15 N., range 10 E., north of Fox river, March 31, 1852.
Township 15 N., range 11 E., south of said river and Lake Puckaway, August 13, 1834, and July 21, 1835.
Township 15 N., range 11 E., north of said river and Lake Puckaway, March 31, 1852.
Township 16 N., range 11 E., south and east of said river, May 3, 1836.

Township 16 N., range 11 E., north and west of said river, March 31, 1852.
Township 16 N., range 12 E., south and east of said river, May 3, 1836.
Township 16 N., range 12 E., north and west of said river, March 31, 1852.
Township 17 N., range 12 E., south and east of Fox river, May 3, 1836.
Township 17 N., range 11 E., north and west of Fox river, March 31, 1852.
Township 17 N., range 13 E., east of Fox river, May 3, 1836.
Township 17 N., range 13 E., west of Fox river, March 31, 1852.
Township 17 N., range 17 E., west of Lake Winnebago, October 23, 1835.
Township 17 N., range 18 E., east of Lake Winnebago, July 21, 1835.
Township 18 N., range 13 E., east of Fox river, May 3, 1836.
Township 18 N., range 13 E., north of Fox river, December 24, 1851.
Township 18 N., range 14 E., east and south of Fox river, October 23, 1835.
Township 18 N., range 14 E., west and north of Fox river, December 24, 1851.
Township 18 N., range 15 E., east and south of Fox river, October 23, 1835.
Township 18 N., range 16 E., west and north of Fox river, December 24, 1851.
Township 18 N., range 16 E., south and west of Lake Butte des Morts and Fox river, and Lake Winnebago, May 3, 1836, and September 28, 1839.
Township 18 N., range 16 E., east of Lake Winnebago, September 28, 1839.
Township 18 N., range 17 E., west of Lake Winnebago, September 28, 1839.
Township 19 N., range 13 E., west of Fox river, December 24, 1851.
Township 19 N., range 15 E., south and east of Fox river, May 3, 1836.
Township 19 N., range 15 E., west of Fox river, December 24, 1851.
Township 19 N., range 16 E., west of Lake Winnebago, September 28, 1839.
Township 19 N., range 17 E., west of Lake Winnebago, September 28, 1839.
Township 19 N., range 18 E., east of Lake Winnebago, July 21, 1835.
Township 20 N., range 17 E., northeast of Lake Winnebago, July 21, 1835.
Township 20 N., range 17 E., northwest of Lake Winnebago, April 20, 1839.
Township 20 N., range 18 E., northeast of Lake Winnebago, July 21, 1835.
Township 20 N., range 18 E., northwest of Lake Winnebago, April 20, 1839.
Township 21 N., range 17 E., southeast of Lake Winnebago, July 21, 1835.

Township 21 N., range 17 E., north and west of Lake Winnebago, December 31, 1844.
Township 21 N., range 18 E., southeast of Lake Winnebago, July 21, 1835.
Township 21 N., range 18 E., north and west of Lake Winnebago, December 31, 1844.
Township 21 N., range 18 E., south of Fox river, July 21, 1835.
Township 21 N., range 18 E., north and west of Fox river, July 29, 1847.
Township 21 N., range 19 E., east of Fox river, July 21, 1835.
Township 21 N., range 19 E., west of Fox river, April 22, 1847.
Township 22 N., range 19 E., east of Fox river, July 21, 1835.
Township 22 N., range 19 E., west of Fox river, December 31, 1844.
Township 22 N., range 20 E., east of Fox river, July 21, 1835.
Township 22 N., range 20 E., west of Fox river, December 31, 1844.
Township 23 N., range 20 E., east of Fox river, July 21, 1835.
Township 23 N., range 20 E., west of Fox river, December 31, 1844.
Township 24 N., range 21 E., south and east of Fox river, July 21, 1835.
Township 24 N., range 21 E., west of Fox river, December 25, 1844.

Exhibit B.

GENERAL LAND OFFICE, *April* 9, 1852.

GENTLEMEN: The receiver's letter of 20th February, containing the application of the judge of the county court of Columbia county, Wisconsin, for the entry of certain lands therein described, by virtue of the act of 23d May, 1844, and certain testimony in support of such application, has been received.

It would seem that the application was refused, on the ground that a plat of the town, duly recorded, was not produced at your office, as required in letter to the register on the general subject of entries, under the act dated 2d February last.

The receiver states that it would be impossible for the judge to produce a plat thereof, duly recorded, for the reason that the statute of said State of Wisconsin prescribes that no one, except the owner of the soil, has a right to establish village plats, and have the same recorded; and the same averment is made in a letter from John Delaney, esq., dated 23d February last; and yet it would appear from the testimony that a village plat of the town in question (Portage City) was recorded about two years since in the office of the register of deeds of Columbia county.

The whole action on this subject, however, is premature, so far as an allowance of the claim is concerned, because the land forms a part of the Menomonee cession, and the land included in that cession will not become public land, under the treaty with the Menomonees, until after the first June next; and, before that time, no question in relation to the sale of any portion of said land should be entertained by you.

On the point, however, involved in this case, you are hereby instructed that, after the 1st June next, upon application being made by the proper authority, as now, with similar testimony accompanying the same, and with the following additional evidence, you would be authorized by the law of May 23, 1844, to permit the entry of every legal subdivision *included in the town*, to the extent of 320 acres.

The additional evidence is the following: A certified copy of the plat referred to, with additions thereto, indicating the present extension of the town, and the marking of lines, to show the subdivisions of the public lands embraced by the whole town.

The lines indicating the additions to the town, and those showing the boundaries of the subdivisions of the public land, will be made by the county surveyor, and be accompanied by his affidavit as to the correctness thereof.

Respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

To REGISTER AND RECEIVER,
Green Bay, Wisconsin.

P. S.—The papers enclosed by the receiver are herewith returned. You will advise the judge of the action had without delay.

Exhibit C.

RECEIVER'S OFFICE AT GREEN BAY,
June 1, 1852.

Received from Joshua J. Guppey, county judge of Columbia county, Wisconsin, the sum of two hundred and eighty-eight dollars and ninety-one cents, being in full for the purchase in trust for the several use and benefit of the occupants thereof, according to their respective interests, (by virtue of an act of Congress, approved May 23, A. D. 1844, entitled, "An act for the relief of the citizens of towns upon the lands of the United States under certain circumstances.") The west half of southwest quarter, and northeast quarter of southwest quarter, and lots two and three of section No. 5, and lots five and six of section No. 8, in township No. 12 of range No. 9, containing two hundred and thirty-one acres and thirteen-hundredths, at $1 25 per acre.

$288 91.

EDGAR CONKLIN, *Receiver.*

Exhibit D.—No. 15,781.

LAND OFFICE AT GREEN BAY,
Wisconsin, June 1, 1852.

It is hereby certified that, in pursuance of law, Joshua J. Guppey, county judge of Columbia county, State of Wisconsin, on this day purchased of the register at this office, in trust for the several use and benefit of the occupants thereof, according to their respective interests, by virtue of an act of Congress, approved May 23, 1844: "An act for the relief of the citizens of towns upon the lands of the United States, under certain circumstances"—the lot or west half of southwest quarter, and northeast quarter of southeast quarter, and lots two and three of section number five, and lots number five and six of section number eight, in township number twelve of range number nine east, containing two hundred and thirty-one 13-100 acres, at the rate of one dollar and twenty-five cents per acre, amounting to two hundred and eighty-eight 91-100 dollars, for which the said Joshua J. Guppey has made payment in full, as required by law. Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the Geneal Land Office, the said Joshua J. Guppey shall be entitled to receive a patent for the lands above described.

ALEXANDER SPAULDING,
Register.

On the face of the foregoing certificate the following words, figures, and letters, were written:

"G. L. O. New certificate issued, in lieu of this, for lots 5 and 6 of sec. 8, 12, 9 only, and hereto attached. N. P. C."

The following words and figures were endorsed on the back of the foregoing certificate:

Certificate of purchase to Judge Guppey.—Order made for a patent by Commissioner, 28th April, 1854. A patent was issued for lots 5 and 6 of section 8, township 12, range 9 east, containing together 54 acres, or 55 40-100 acres. The other excluded on account of prior rights. The purchase money on other tracts will have to be refunded. (See letters to Register and Receiver, April 28, 1854, and to Judge Guppey, May 2, 1854. Patented April 28, 1854, lots 5 and 6, sec. 8, T. 12, R. 9, containing 55 40-100 acres.)

W. ½ of S. W. ¼, N. E. ¼ of S. W. ¼, and lots 2 and 3, sec. 5, T. 12, R. 9, selected by governor of Wisconsin July 8, 1852, under act of 8th Auguest, 1846, for the improvement of Fox and Wisconsin rivers. Selection approved by the President August 28, 1852.

Suspended per order of Commissioner.

A new certificate, dated April 28, 1854, was issued in lieu of certificate of June 1, 1852, for lots 5 and 6 only.

Exhibit E.

GENERAL LAND OFFICE, *July* 30, 1853.

GENTLEMEN: A letter has been received at this office from Judge Guppey, under date 6th instant, in which he states that he has informed

the register at Menasha that the tracts in section 5 of T. 12, R. 9 E., included in his entry No. 15,781, in trust for the inhabitants of Portage City, were not occupied as the site of the said city prior to the grant by Congress to the State of Wisconsin, (including the said sction 5,) to aid in the improvement of the Fox and Wisconsin rivers.

Under these circumstances, said entry must be corrected so as to include only so much of the land originally embraced in section 8.

Judge Guppey is under the impression that the information given your office, on the point herein adverted to, has been communicated by you to this office. Such is not the fact—no report having reached me on this subject.

Your immediate attention is therefore called to the letter from this office of the 14th February last; and upon receiving your reply thereto, the proper steps will be taken to correct the said entry by Judge Guppey, and vacate the entries made by John Fitzgerald, (Nos. 16,022 and 16,023,) of the lands awarded to said Guppey in trust for the inhabitants of said Portage City.

Very respectfully, &c.,

JOHN WILSON, *Commissioner.*

REGISTER AND RECEIVER,
Menasha, Wisconsin.

Exhibit F.

GENERAL LAND OFFICE,
April 28, 1848.

GENTLEMEN: In letter from this office of 30th July, 1853, your attention was called to a previous communication of 14th February, 1853, on the subject of an entry, No. 15,781, made by Judge Guppey, of Columbia county, Wisconsin, under act 23d May, 1844, in trust for the inhabitants of Portage City; and an early action in the matter on your part was requested.

No reply to my said letter having been received, (and for which apparent inattention an explanation is desired,) and Judge Guppey having again recently addressed this office on the subject, I could not feel justified in longer withholding the patent on so much of the said entry as should be properly included therein, viz: lots 5 and 6 of section 8, T. 12, R. 9 E; and the said patent has been accordingly this day issued and delivered to C. J. Pettibone, esq., by request of Judge Guppey.

Therefore, I herewith enclose for the register's signature a corrected certificate, No. 15,781, *embracing the said lots only*, which he will sign and return to his office with reference to the date thereof. The purchase money on the balance of the entry (W. ½ and N. E. ¼, S. W. ¼, and lots 2 and 3 of section 5, T. 12, R. 9 E.) will be returned upon proper application being made therefor through the district office.

I have also cancelled entries Nos. 16,022 and 16,023, improperly permitted by your predecessors in office on 15th November, 1852, in the name of one John Fitzgerald for the lots 5 and 6 aforesaid, which lots were

then covered by the entry of Judge Guppey, and are included in the patent this day issued to him.

The usual application must be made for the return of the purchase money.

Be pleased to indicate upon your books the correction of certificate No. 15,781, and the cancellation of Nos. 16,022 and 16,023.

Very respectfully,

JOHN WILSON,
Commissioner

REGISTER AND RECEIVER,
Menasha, Wisconsin.

Exhibit G.

GENERAL LAND OFFICE,
May 30, 1856.

SIR: In reply to your letter of the 28th instant, I have to state, that since the passage of the act of Congress, approved 8th August, 1846, granting land for the improvement of the Fox and Wisconsin rivers, there has been a large quantity of land sold and otherwise disposed of in the *odd-numbered sections*, within the limits of said grant; and subsequent to the act of 29th of May, 1848, (admitting Wisconsin into the Union,) there have been various tracts in the odd-numbered sections sold, among which are the following:

E. ½ of N. E. ¼ S. 1, T, 16 N., R. 16 E., entered June 24, 1848, by Leonard Winegar.

N. E. ¼ of S. E. ¼ S. 23, T. 17 N., R. 16 E., entered June 15, 1848, by Darius E. Pingery.

W. ½ of N. W. ¼ S. 3, T. 15 N., R. 18 E., entered June 22, 1848, by Thomas Boyd.

S. W. ¼ of N. W. ¼ S. 3, T. 15 N., R. 18 E., entered July 19, 1848, by J. D. Van Vleek.

E. ½ of S. E. ¼ S. 7, T. 19 N., R. 19 E., entered September 20, 1848, by Isaac Van Uei.

I am, sir, very respectfully, your obedient servant,

THOMAS A. HENDRICKS,
Commissioner.

Hon. RICHARD M. YOUNG, *Present.*

Exhibit H.

GENERAL LAND OFFICE,
June 30, 1856.

SIR: The W. ½ S. W. ¼, N. E. ¼, S. W. ¼, and lots 2 and 3 of section 5 of T. 12, W. R. 9 E., Wisconsin, were in controversy *between the settlers and occupants thereof*, claiming under the law of 23d May, 1844, and the State of Wisconsin, under act approved 8th of August, 1846, entitled, "An act to grant a quantity of land to aid in the im-

provement of the Fox and Wisconsin rivers; and to connect the same by a canal," (U. S. Statutes at Large, vol. 9, page 83)—and I have the honor to submit herewith the facts in the case, together with an argument from Richard M. Young (with accompanying papers,) as attorney for the occupants of the land in controversy.

By the act of 1846, referred to, there was granted to the State of Wisconsin, on her admission into the Union, "a quantity of land equal to one-half of three sections in width, on each side of the Fox river, and the lakes through which it passes, from its mouth to the point where the Portage canal shall enter the same, and on each side of the said canal, from one stream to the other, reserving the alternate sections to the United States, to be *selected under the direction of the governor of said State*, and such *selection* to be *approved* by the *President of the United States.*

Under the 2d section of the said act of 1846, the lands thus granted became the property of the State should the legislature thereof, after her admission, agree to accept them upon the terms specified in the act.

Wisconsin was admitted into the Union on the 29th of May, 1848, and formally accepted this grant, by act of the legislature of 29th June, 1848.—(Revised Statutes of Wisconsin, p. 765.)

At the time of the passage of this said act of 1846, the lands in controversy were occupied and claimed by the Menomonee Indians, and were not ceded to the United States until the treaty of October, 1848. (U. S. Statutes at Large, p. 952.)

By the 8th article of this treaty, the Indians were to be permitted to remain on the lands thus ceded, for the period of two years from the date of the treaty, and until the President should notify them that the same were wanted.

It appears, however, that they were never so notified by the President, but that by mutual consent they ceased to occupy the said land from and after the 1st of June, 1852.

On the 8th July, 1852, a large body of lands was selected by the governor of Wisconsin under the said act of 1846, and among the lands thus selected, were the tracts in controversy; and on the 23d August, 1852, the President of the United States approved the selections referred to, subject to any *right which may have existed at the date of said approval.*

Before such selection and approval, however, I find that application had been made, during the winter of 1851 and 1852, by Joshua J. Guppey, judge of the county court, in and for the county of Columbia, and State of Wisconsin, to enter the aforesaid tracts of land (in section 5, T. 12, R. 9,) as a *town site*, under and by virtue of the provisions of the law of 23d May, 1844, which application was refused or rejected by the district land office, because the land thus applied for, formed a part of the Menomonee cession, *and was not then public land, open to entry or sale*, inasmuch as the Indians were still in the occupancy thereof, &c. Then the Commissioner of this office, however, instructed the register and receiver that the application might be entertained, if supported by sufficient evidence of right, after the 1st June, 1852, when the entry might be permitted, of every legal subdivision included in the town, to the extent of 320 acres.

On that day, viz: 1st June, 1852, the application of Judge Guppey, was received, and he was permitted to enter, in trust for the occupants of the town, the said land in section 5, together with lots 5 and 6 of section 8, same township and range, per certificate No. 15,781.

It subsequently appearing, from the letter received at this office, from Judge Guppey himself, under date 6th July, 1853, that the subdivisions in section 5 "were not occupied as the site of the town or city prior to the grant by Congress to the State of Wisconsin,"—in the law of 1846, his said entry was corrected, so as to embrace only lots 5 and 6 of section 8, and on this a patent was issued under date 28th April, 1854.

I do not regard the grant made to the State of Wisconsin, by law of 1846, as a present grant—identifying a particular portion of the public domain, by such certain description as to vest it in the State. Nor did the selection by the governor and approval by the President, alone vest the fee simple in the State. The last executive act still remains to be performed. And the lands claimed by the inhabitants of Portage City, not having been *certified* by the Commissioner of the General Land Office, *under the seal of the office,* according to the provisions of the act of 3d August, 1854, are yet under the control of the Executive; and the entry to Judge Guppey, being *prior in date*, to the selection by the governor secures rights under the law of 1844, which could not be divested by such selections.

Therefore I respectfully recommend that the Executive be requested to revoke his said approval, so far as the lots or subdivisions in sec. 5, T. 12, R. 9, are concerned, in order that proper steps may be taken to reinstate the entry of the town, so that the certificate may stand as originally issued on the 1st day of June, 1852; and a patent under the law of 1844 be given for the lands in controversy.

I have the honor to be, very respectfully, your obedient servant,

THOS. A. HENDRICKS, *Commissioner.*

Hon. R. McCLELLAND,
Secretary of the Interior.

Exhibit I.

DEPARTMENT OF THE INTERIOR,
July 23, 1856.

SIR: I have the honor to submit herewith the papers in the "Portage City case," so called, for your opinion upon certain points involved therein, as hereafter specified. The contest appears to involve the United States, the State of Wisconsin, and the persons interested in Portage City, and came before the department in a letter of the Commissioner of the General Land Office of the 30th of June last, to be found among the papers. When the grant was made to the State, the Indian title to the particular land in controversy existed, and continued for several years, and until the same was extinguished by treaty of October 14, 1848. Immediately after such extinguishment, the judge of the county, in strict conformity with law, made an entry

of the lots in dispute, and *soon after* the State embraced them in a list of selections under the grant, and before the entry was reported to the General Land Office, and without any knowledge of that fact, the selection was approved. If the title of the lands granted passed to the State at the date of the grant, it seems doubtful whether any part of this Indian land was embraced, because the Indian right was still existing. If it had remained to this time as it was in 1846, and no treaty had been made, could the State legally claim the lots under the grant?

The object of the grant was to enable the State to make an important improvement, but at the same time to compensate the general government for the lands granted, by largely enhancing the value of the residue. This principle pervades all the grants for such purposes made prior to the one in question. The Indian lands, such as embrace the lots, are valuable, and in order to extinguish the Indian titles thereto, far more than an ordinary *minimum* is usually paid. Suppose in this case these lands had cost the general government ten dollars per acre, would it be conformable to the principle adverted to, to reduce the price to double the minimum, or as by subsequent legislation relative to this grant, to the ordinary minimum?

When the question arises between the general government and a State, it does not present the same difficulties as where by previous acts of Congress, or by treaties, third parties intervene. In the case of the Indian reservations along the line of the Wabash and Erie canal, when the Indian title was extinguished after the grant, particular tracts were set apart for special reserves, and these tracts have invariably been held by them without disturbance. So also in regard to preemptions upon these grants, where the *initiative* has been taken before the grant attached. It may be admitted that the government, by general grant, passes title to all lands within the prescribed limits which are subject to private entry or sale, but does it as to Indian land or military reservations, unless they are particularly designated or clearly embraced?

Not being satisfied what would be proper, under the circumstances, I have concluded to refer the papers in the case, together with the argument of Judge Young and the brief of Doctor Frailey, to you, for your opinion, as to—

1. Whether the act of 8th of August, 1846, was such a present grant as carried with it, after the selection by the governor of the *alternate odd sections* within its limits, the title of the United States to the lots in question, subject to the extinguishment of the rights of the Indians, or had the State the exclusive right to make selection of the lots after the Indian title was extinguished?

2. Did not the Indian title exclude the lots from the grant; and after the general government secured the unqualified title thereto, is not the one who takes the first step, and prosecutes it with a view of acquiring the land conformably to the law, entitled to the precedence?

With great respect, your obedient servant,

R. McCLELLAND,
Secretary.

Hon. C. CUSHING,
Attorney General United States.

ATTORNEY GENERAL'S OPINION.

Exhibit K.

ATTORNEY GENERAL'S OFFICE,
December 22, 1856.

SIR: I have the honor to present herewith my conclusions in the Portage City case, so called, which you referred to me by letter of the 26th of July.

Congress, on the 8th of August, 1846, passed an act entitled "An act to grant a certain quantity of land to aid in the improvement of Fox and Wisconsin rivers, and to connect the same by a canal, in the Territory of Wisconsin," of which act the provisions material to the matter in hand are as follows:

SECTION 1. That there be and hereby is granted to the State of Wisconsin on the admission of such State into the Union, for the purpose of improving the navigation of the Fox and Wisconsin rivers in the Territory of Wisconsin, and in constructing the canal to unite the said rivers at or near the portage, a quantity of land equal to one-half of three sections in width on each side of the said Fox river and the lakes through which it passes, from its mouth to the point where the portage canal shall enter the same and on each side of the said canal from one stream to the other, reserving the alternate sections to the United States, and such selection to be approved by the President of the United States. * * * * * *

SEC. 2. That as soon as the Territory of Wisconsin shall be admitted as a State into the Union, all the lands granted by the act shall be and become the property of said State for the purposes contemplated in this act, and no other: *Provided*, That the legislature of said State shall agree to accept the said grant upon the terms specified in this act and no other. * * * * * *

SEC. 3. That the said improvement shall be commenced within three years after the said State shall be admitted into the Union, and completed within twenty years; or the United States shall be entitled to receive the amount for which any of said lands shall have been sold by the State: *Provided*,

That the title of the purchasers under the sale made by the State in pursuance of this act shall be valid.—(9 Stat. at Large, p. 83.)

Without anticipating controversy, let us go back to the day when the act was approved by the President, and see what its provisions on their face import, and what rights they communicate to the future State of Wisconsin.

1st. "That there be and hereby is granted." Those are indubitably effective terms of grant *in præsenti*. On that day a title or right of title passed from a grantor to a grantee. What passed as subject matter, and by what quality of title, as whether in fee simple, fee base, tenancy for life or years, and whether in possession or reversion, or what not, remains to be ascertained.

2d. The grant is "to the State of Wisconsin on the admission of

such State into the Union." That fixes the *time* when the grant is to be effectual. It is a grant in so far as the grantor can make it, on the day of date, but the grantee is to take only when admitted into the Union.

On the admission of Wisconsin, the State takes some kind of title then. What title is it? The act proceeds to say, that at that moment "all the lands granted by this act shall be and become *the property* of said State.

These expressions in a statute, according to the established rules of construction, carry the fee, or at least the whole interest and estate of the grantor, whatever that may be. It is true, these are not sacramental words of a fee simple at the common law. It is also true, that the term "property" is often used in a general sense to cover anything which belongs to a person, by whatever title or tenure.—(Smith *vs.* the United States, 10 Peters, p. 330.)

But a grant of land to be and become the property of another, implies a fee by the public law of Europe and America.

That such is the meaning of the act in this respect is further proved by the subsequent expression. "*The title* of purchasers under the sales made by the State, in pursuance of this act, *shall be valid.*" The phrase "validity of title" is found in the laws defining what conveyances the United States are to take of lands intended as the site of any public work.—(Reso. Sept. 11, 1841, 5 Stat. at Large, p. 468.) Its construction is thoroughly fixed by the practice of my predecessor and myself, and is taken, as a matter of course, in the daily business of passing on muniments of title. It means *fee simple.*

4th. The grant is to the State of Wisconsin "for the purpose of improving the navigation of the Fox and Wisconsin rivers, (sec. 1,) and for no other," (sec. 2,) and the improvement is to be commenced and completed within present dates, (sec. 3,) but the failure of the State does not effect the title; it only renders the State a debtor to the United States for the pecuniary proceeds of the sale of the lands.—(Sec. 3.)

5th. The grant is made subject to one condition, namely: "that the legislature of said State shall agree to accept such grant upon the terms specified in the act." That may be deemed a condition. There certainly is no other.

6th. Finally, the thing granted is defined with reasonable certainty. "It is a quantity of land equal to one-half of three sections in width on each side of the Fox river, and the lakes through which it passes, from its mouth to the point where the Portage canal shall enter the same, and on each side of said canal from one stream to the other, reserving the alternate sections to the United States." Here is not a grant of lands along arbitrary lines unascertained, like those of unlocated railroads, nor a grant at large in a whole State, but a grant within limits geographically determined by the act, and needing only surveys according to accustomed statute rules, to possess absolute precision of locality, and then requiring only to be equally divided between the United States and the State.

That involves the necessity of partition between the two tenants in common.

But the act forsees this, and means of amicable partition are provided by the enactments, that the portion belonging to the State o

Wisconsin is "to be selected under the direction of the governor of said State, and such selection to be approved by the President of the United States." The manifest object of this selection is not merely to fix a *float*, but to effect partition between co-tenants.

Upon this review of the act, no apparent question exists. It is a conditional and executory grant in fee simple, to take effect and become executed on the happening of events specified.

These events happened. Wisconsin was admitted into the Union contingently on the third of March, 1847, and absolutely on the 29th of May, 1848, (Comp. 10 Statutes at Large, pp. 178 and 233;) and on the 29th of June, 1848, the legislature of the State of Wisconsin accepted the grant in the terms of the act of Congress.—(Revised Statutes, Wisconsin, p. 765.)

Let us pause a moment here, at the 29th of July, 1848, and see how the title stands. The United States granted, to take effect on a certain contingency; that contingency had occurred. The United States granted on condition; that condition had been performed. The lands conveyed are described with reasonable certainty, so as to be capable of passing by words of grant. What *legal* construction is there to forbid the idea of a vested title that day in the State of Wisconsin? I am not aware of any. To be sure, the land is held by undivided moieties; but what then? Who doubts that two proprietors may be tenants in common by undivided moieties—each by a fee simple?

To enjoy in severalty, there must be partition; but the partition does not make title, nor its absence take away or suspend title, either as between the co-tenants themselves, or as between them and rest of the world. Nor is it material that one of the co-tenants derives title from the other; they are not the less equally co-tenants of the fee. Whoever trespasses on the land, trespasses against both co-tenants. Whoever undertakes to appropriate any part of it unlawfully, is a wrong doer in respect of each. As, until the land shall have been duly divided, neither of the parties can occupy any part of it in severalty and exclusively, so neither can convey to others, power to occupy severally in his right. Nor without partition can others come in by act of law, by descent, or otherwise, derivatively under one of the parties, to acquire title in severalty and to the exclusion of the other party. All these are but the ordinary legal incidents of title in land. In fine, if the lands described in the act existed, then it seems to me that on the 29th of June, 1848, the State of Wisconsin was owner in fee of one undivided moiety of the tract of land described, in common with the united States. But, perhaps the United States had inadvertently conveyed a part of this land to somebody else, or had allowed others to acquire title in severalty to some parts of it by act of law, to the prejudice of the rights of the State of Wisconsin. Very well—if the United States have done or suffered this, it is presumable that they will repair the wrong. Such proved to be the fact on both points; for on the 2d of March, 1849, the following act of Congress was passed:

"That all land entries made in the Green Bay district, in the State of Wisconsin, upon the odd-numbered sections of the Fox and Wisconsin river reservation in said State, subsequent to the passage of an act entitled 'An act to grant a certain quantity of land, to aid in the

improvement of the Fox and Wisconsin rivers, and connect the same by a canal in the Territory of Wisconsin, approved on the 8th day of August, 1846,' be, and the same are declared to be valid, as though said act had not been passed: *Provided*, nevertheless, that the governor of said State is hereby authorized to select the same quantity of other lands in lieu thereof, subject, however, to the approval of the President of the United States.

SEC. 2. That all similar entries made upon the even-numbered sections of said reservations be also declared to be as good and valid as though said reservation had not been made.—(9 Statutes at Large, p. 352.)

Here is indemnification of the State for ascertained deficiencies in the thing granted, which indemnification is remarkable in this, that it assumes that partition of the lands between the State and the United States has already taken place, the State having become tenant in severalty of the odd sections, and the United States of the even sections. I shall return to this point in the sequel. Perhaps, indeed, the United States had nothing within the limits described to convey; that it did not own or possess any land there. That is alleged in this case, in so far as concerns the particular section of land in controversy.

At the time when the act making this grant to the State of Wisconsin was passed, a portion of the land comprehended within the limits described was still occupied by the Menomonee Indians in their aboriginal right.

Their title was extinguished on the 18th of October, 1848, by treaty of that date, the second article of which is in these words:

"The said Menomonee tribe of Indians agree to cede and do hereby cede, sell, and relinquish to the United States, all their lands in the State of Wisconsin wherever situated."—(9 Statutes at Large, p. 952.)

The treaty contained a provision empowering the Indians to continue to live temporaily on the cession, as follows:

ART. 8. It is agreed that the said Indians shall be permitted, if they desire to do so, to remain on the land hereby ceded, for and during the period of two years from the date hereof, and until the President shall notify them that the same are wanted.

This indefinite occupancy was terminated on the 1st of June, 1852, when the Menomonees were concentrated on a definite portion of the cession lying near to the falls of Wolf river, and of course then ceased to have any possible relation to the present question.

Upon these facts the idea appears to be entertained at the General Land Office, either that no title passed to the State of Wisconsin, or that all such title was suspended or held in abeyance until the final cessation of any sort of occupation by the Indians.

I cannot bring myself to agree to this. It seems to be contrary to well-established doctrines of municipal as well as public rights.

Mr. Young appearing for claimants of Portage City, refers to a number of cases in which the court speaks of the inviolability of the Indian territory, and pronounce surveys made therein illegal.—(See Preston *vs.* Browder, 1 Wheat., 114; Danforth *vs.* Thomas, 1 Wheat., p. 155; Danforth *vs.* Wear, 9 Wheaton, p. 673.)

But these are cases of local law, in which the question was, whether

the State of North Carolina, as the proprietor of lands within her border, occupied by Indians, had authorized such surveys.

The Indians were to be protected by the State, held inviolable against intrusion.

No surveys in their territory, so called, were to be made without express authority of the State. That the State had such authority we shall see hereafter.

There was a time when the true relation of the Indians to the United States was not so clearly seen as it now is.

We have been accustomed to make *treaties* with them as if they were independent of us; that was an error.

We dealt with their petty tribes as nominal *nations;* that led to strange misconceptions. We had spoken of *their* lands as if a handful of savages, who happened to be within the geographical limits of a region of country, large enough for civilized empire, could be deemed its *proprietors*, in virtue of any rule of natural right or of positive law.

We had respected their assumed rights—that is, had left them to their savage quasi independence, instead of by force compelling them to enter into some appropriate place in the social organization, and thus they had perished of too much liberty.

Finally, we of the older States of the Union, which had expelled or killed off most of our Indians, or reduced them to a condition of helpless pupilage, had now come to be extremely sensitive to the alleged wrongs of the same nature, that is policy in imitation of ours, to which the younger States of the south were now subjecting their Indians.

The elaborate investigation of the subject which ensued, cleared off all these errors; and discussion ended with the great cases of the Cherokee nation *vs.* The State of Georgia, (5 Peters, p. 1,) and Worcester *vs.* The State of Georgia, (6 Peters, p. 515.)

It is a universal doctrine of public law that the Indians are the domestic subjects of the particular Europeo-American States in which they may happen to be.—(The Cherokee nation *vs.* The State of Georgia, 5 Peters, p. 1.)

It is a doctrine of our public law, equally fundamental, that the Indians do not hold a fee in the lands of their aboriginal occupation, but only a usufruct; the fee being in the United States; or, in some cases, in the several States.—(Johnson *vs.* McIntosh, 7 Wheaton, p. 543; Fletcher *vs.* Peck, 6 Cranch, p. 87.)

When the United States made this grant to the State of Wisconsin, the fee of all the land was in the United States, subject in the respect of a part, to the usufruct of the Menomonees.

That usufructuary occupation was capable of being extinguished by the United States, and by them alone; and until its extinction, the entire original title remained between them and the Indians.

What rule of law stood in the way to forbid the United States to convey to the State of Wisconsin such title as they had? I know of none.

As a question of municipal law, the transaction is just as common and ordinary as any other description of conveyance.

The proprietor of land leases it for ninety-nine years, with or without

right of purchase, but he sells it to another, if he will, subject to the lease and its conditions.

An heir in fee simple comes into possession of the patrimonial estate encumbered with mortgages, jointure, dower, marriage settlements, and provisions for other members of the family; but he may sell, if he will, subject to these incumbrances.

Nay, the cases are familiar, of sales of imperfect titles, which, when perfected in the person of the grantor, enure to the benefit of the grantee.—(See Landes *vs.* Brent, 10 Howard, p. 348; Stoddard *vs.* Chambers, 11 Howard, p. 316; Bissell *vs.* Penrose, 7 Howard, p. 317.)

By what rule of law is it, that the United States, as proprietors, are deprived of this common right of all proprietors? And by what rule of law is it, that the benefit of this common right is taken away from the grantees of the United States?

Whether the application of the doctrine to lands still occupied by Indians involve inconvenience to the latter, or not, is a question of public policy for the United States to determine. Conveyances of such a nature are of no rare occurrence in the history of the country.

When the States of Massachusetts, Connecticut, New York and Virginia, conveyed their western lands to the United States, those lands were encumbered with the occupancy of Indians. So, when the United States and the State of Georgia entered into their compacts of cession, the lands conveyed were in part in the occupation of Indians. What then?

Was it ever imagined that those conveyances were to be held as of no effect, or suspended until the Indians should have been removed?

And if the United States see fit to make such a grant so encumbered to the State of Wisconsin, and the State to accept it, what have third parties to do with the case?

Is not that a matter which concerns the immediate parties alone, the United States and the State?

If, indeed, the Indians offered themselves to object to the conveyance, or anybody claiming under the Indians did so, that might be conceivable, although it could not avail to defeat the act of the United States.

But in the present case, the objection is in behalf of persons who themselves claim under the United States.

The objection thus proceeds on the most untenable assumption, that the United States, through a subsequent grantee of theirs, will take advantage of the supposed defect in their prior grant to the State of Wisconsin.

Finally, the precise point of the legal effect of a grant of lands under Indian occupancy, has come before the Supreme Court again and again, and received judicial determination.

In the case of Mitchel and others *vs.* the United States, that was one of the points, and it was expressly held by the Court, as the established law of America, that the government owns the original fee of the soil, and may grant the same while the lands remain in the possession of the Indians.—(9 Peters, p. 711.)

The same doctrine is deliberately re-affirmed in the case of the United States *vs.* Fernandez.—(10 Peters, p. 303.)

There is no room whatever to question the law of these decisions. They are in strict conformity with principle and precedent.

There is another case which dispels all doubt as to the signification of the decisions in the three cases from North Carolina, cited by Mr. Young.

It is the case of Lattemeer *vs.* Poteet, in which it is directly decided that the State of North Carolina could grant in fee, lands in the actual occupancy of Indians.—(14 Peters, p. 4.)

There is a case of ordinary occurrence in the legislation of the United States, which illustrates the same doctrine, and is otherwise pertinent to the question before me.

I allude to the various provisions of law which assure to each State in which the public lands lie, a section, by number (16,) in each township, for the use of schools. That is a legislative grant to the State by the United States, as in the present case.

It is notorious that in a multitude of instances the land at the time of the grant is in the occupation of Indians, and wholly unsurveyed. Nevertheless, when the Indians have been removed, the lands surveyed and marked, and the section sixteenth ascertained by locality, it comes into possession of the State.

It was never imagined that, in order to receive its rights, the State, when the land comes into market, must run a race against all the world, merely because of the intermediate occupation of the Indians.

I presume, therefore, to say, that in my judgment, the State of Wisconsin had, on the 29th day of June, 1848, a vested interest in one undivided moiety of the lands lying within the limits of the grant as described in the act of Congress.

I might stop here. For, a vested interest in the whole, so far at least as to exclude all adversary claims in the right of the government.

And the parties who set up title to Portage City against the grantee of the State, do so by claim of pre-emption for municipal purposes, under the act of Congress of August 3, 1844, (May 23, 1844,) that is, in the right of the United States; they do not pretend any commencement of occupation until late in 1849; and their assumed title has its true legal institution on the 1st of June, 1852; and either of these claims, even the oldest, whatever may be its intrinsic equities, if any, must yield to the still older title of the State.

But the great care bestowed upon this case by Mr. Young, in behalf of the pre-emption claimants, induces me in regard for him to advert briefly to two or three other incidental considerations. Owing to the continued occupation of these lands by the Menomonees, a portion of them (including the tract here in dispute,) were not surveyed until the year 1851, and did not come into market until the 1st of June, 1852.

On that day the county judge entered the land in question as trustee of the proprietors of Portage City.

On the 8th of July, 1852, the governor of the State of Wisconsin, (Farwell,) reported a list of lands selected by the State, including the

disputed half section, for the approval of the President, and the same was approved on the 23d of August, 1852.

The hypothesis of the pre-emption claimants of Portage City, is, that the title of the State dates from these last acts of selection and approval; and is, therefore, posterior to that of Portage City.

To this it might suffice to answer, that the equities of the State are as good equities as those of the municipal pre-emptors: and that, in a conflict of equities of equal intrinsic value, we must go back to their respective inceptions and trace down their history.

This *marshaling* of equities is, in many cases, the only method of determining a question of conflict of title under the land laws of the United States.—(Ex. qr. Hofmagle *vs* Anderson, 7 Wheaton, p. 212.)

And if it be disputed whether the grant to, and acceptance by the State, constituted a legal title, it is impossible to deny that the grant itself was, at least, incipiency of title, on the passage of the granting act then passed, if not a legal, certainly an equitable interest to the future State of Wisconsin. And that equitable interest was of no uncertain locality.

It was positively fixed, by words of unmistakeable force, at a place, and within limits, fully capable of ascertainment by the ordinary means of giving precision of location and bounds to any grant.

There was a standing equity in the State of Wisconsin long anterior to any pre-emption claimants, and which older equity could not be lawfully divested by or through the United States.

Again, the argument of the pre-emptors pre-supposes that selection by the State was an essential step in the acquisition of title to any particular section. I do not concede that in the sense of the argument. It did not need selection to fix title within definite limits.

The State of Michigan having a float, definite only in quantity, to be located somewhere in the State, needed to select, in order to fix the grant The State of Iowa having a float dependent on the routes of possible railroads, needed to fix the routes of the railroads in order to localize the grant. Not so here. The grant was fixed in place and limits, as well as quantity by its very terms.

If the act had designated the alternate sections granted, or those retained, there would have been no selection to make. It omitted to do this, and thus left to both parties, the grantor and the grantee, a common right in each section.

Selection thus became requisite, simply as a mode of separating the joint interest of the co-proprietors, and an agreement that one should take the odd sections, and the other the even ones, would constitute a selection by the State and an approval by the President.

Now that is precisely what was done. On the same 29th of June, 1848, on which the legislature of the State accepted its grant, its governor (Dewey) advised the commissioner of public lands that he had selected, for the State of Wisconsin, the unsold lands in the odd numbered sections within the grant.

The Commissioner (Mr. Young,) replied under date of November 9, 1848, that the local land officers had been "instructed to enter on the records and plats of their offices all the unsold lands in the odd numbered sections within the limits of that grant, (as shown by a

diagram of it, which was transmitted to them,) as selected by the State."

And the officers were also directed to prepare and report a list of the unsold lands in order to complete *formality* of the selection.

Meanwhile, these and the future selections were to be duly submitted to the President.

All this time, it is true, that portion of the grant which the Indians still occupied, was not in condition for what the Commissioner calls the *formal* as distinguished from the real selection.

That is to say, the odd-numbered sections were not yet marked out by survey, with number of township and quantity that remained to be done.

But the selection had not the less been made, so that, when the lands were surveyed, nothing more—absolutely nothing—would be needed to distinguish the selections belonging to the State.

It might be convenient afterwards to repeat the selections formally by the township numbers, as Governor Farwell did in 1852; but the substance was performed, in 1848, by Governor Dewey, and that is expressly set forth in the new statement of selections transmitted by Governor Farwell.

That so it was understood—namely, that the State and the United States had made partition—is proved by what follows.

The Commissioner, in his letter above quoted, assuming that the act clearly grants to the State a given quantity of land within defined limits, suggests the propriety of providing by law to indemnify the State for any deficiencies in consequence of previous sales within those limits by the government.

The result was the enactment of the act of March 2, 1849, entitled "An act in relation to the Fox and Wisconsin river reservation, in the State of Wisconsin," hereinbefore cited at length.

I consider that act as absolutely decisive of the point. To be sure, it speaks, in the first section, only of land entries made in the Green Bay land district; but the general provision of the first section, and also that of the second section, if not co-extensive with that of the act of August 8, 1846, yet serve to construe it, and to authenticate the fact of the selection by the State, accepted by the United States.

It is expressly as to the lands of the Green Bay district, and impliedly as to the others, including those of the future Menasha district, (to which these belong,) a legislative ratification of the selection made by Governor Dewey, taking the odd-numbered sections for the State and leaving the even-numbered sections for the United States. After this, a more particular designation of sections, as surveyed, and the approval of that by the President, would be matter of pure form; the title, as title, was already vested and complete in the State of Wisconsin.

Adjudged cases abound in which legislative grants to States have been held to make good title *ipso facto*, and others in which the title has been held to vest only on selection of the particular tract being made by the State.

If, prior to the selection, the grant be executory, on the selection being made it becomes executed, and the courts do not favor attempts

of another party to obtain title against the State.—(Campbell *vs.* Doe, 12 Howard, p. 244.)

There is a great deal of documentary matter and of discussion in the case relative to the nature and grounds of the assumed right of the pre-emption claimants of Portage City; but in my view of the subject, there is no room to consider the claims of these pre-emptors here.

No case of conflict is presented. The State (or its grantees) and the adverse parties all claim alike under the United States. The State has the oldest title, equitable and legal; its selections, duly made, have been duly approved by the President; and he cannot lawfully issue to alleged municipal pre-emptors a patent for lands which have already passed in fee to the State of Wisconsin.

I am, very respectfully,

C. CUSHING.

Hon. ROBERT McCLELLAND,
Secretary of the Interior, Washington City.

Exhibit L.

DEPARTMENT OF THE INTERIOR,
December 31, 1856.

SIR: I return herewith the papers in the Portage City case, submitted in letter from your office of the 30th June last, accompanied by others which have since been filed, and by a copy of the opinion of the Attorney General, of the 22d instant, on the case, furnished upon my submission to him for that purpose.

The conclusions to which he has arrived are adopted by the department, and they will be regarded as definitely settling the question at issue heretofore on the part of the Portage City authorities.

Respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

Hon. THOMAS A. HENDRICKS,
Commissioner of the General Land Office.

DISTRICT OF COLUMBIA,
City and County of Washington, } *sct.*

This day personally came before me, John H. Goddard, a justice of the peace within and for the county and district aforesaid, Richard M. Young, esq., attorney for the inhabitants of Portage City, Wisconsin, and made oath, in due form of law, that he had examined the foregoing petition, and that the material facts and proceedings, as therein mentioned, between the inhabitants and claimants of lots in Portage City, Wisconsin, and the United States, were truly and correctly stated and set forth, to the best of his knowledge and belief.

RICHARD M. YOUNG

Subscribed and sworn to before me, at my office, in Washington city, this eighth day of September, A. D. 1857.

JOHN H. GODDARD, *J. P.*

RICHARD M. YOUNG,
L. S. DIXON,
Attorneys for Petitioner.

IN THE COURT OF CLAIMS.

JOSHUA J. GUPPEY, county judge of Columbia county, Wisconsin, as trustee for the settlers and occupants of "Portage City," *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

The petitioner states that, on the 1st day of January, A. D. 1851, he was, and since that time has continued to be, and now is, county judge of the county of Columbia, in the State of Wisconsin. He claims in that character, and as trustee for the settlers and occupants residing thereon, a pre-emption title to certain lands described in his petition, now known as "Portage City," under the act of Congress approved May 23, A. D. 1844, ch. 17, (5 Stat. at Large, p. 657.) The State of Wisconsin also claims title to the same lands under the act of Congress approved August 8, A. D. 1846, ch. 170, (9 Stat. at Large, p. 83.)

In the case of John C. Hale *vs.* The United States, heretofore decided by this Court, and reported to Congress on the 16th day of May, A. D. 1856, we held that, where there are conflicting claims of title to public lands of the United States, and only one of the claimants is a party to the petition, we cannot decide the case, because, not having the power to convene all the parties before us, we cannot do complete justice. In that case the Court say: "While we are informed that there are three claimants to this land, how can we decide that the Percifull claim is the better claim, when the other claimants are not represented before us, and have had no opportunity of proving to us that a decision ought not to be made in favor of Hale? We have no power to make other persons parties to this proceeding; and without that power, and without hearing all the parties interested before us, we cannot determine which of them is entitled to the land. A decision, either in favor of or against this claimant, must be made upon a partial view of the case, and we could not say, with any certainty, that any result we might reach would be one which would satisfy ourselves, or which ought to satisfy Congress." The same principle is applicable in this case.

Our opinion, therefore, is, that the petitioner is not entitled to an order directing testimony to be taken in this case.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 218.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submits the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The COURT OF CLAIMS respectfully presents the following document as the report in the case of

JOSEPH CLYMER *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Letter from the Third Auditor, with accompanying documents, and the agreements of the United States Solicitor relative to the same, transmitted to House of Representatives.
3. Depositions of S. H. Woodson, offered by claimant, transmitted to House of Representatives.
4. Report of Third Auditor and Second Comptroller upon the claim.
5. Claimant's brief.
6. United States Solicitor's brief.
7. Opinion of the Court.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this first day of April, A. D. 1858. [L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

UNITED STATES COURT OF CLAIMS.

To the Honorable Judges of the Court of Claims:

Your petitioner, Joseph Clymer, of the State of Missouri, respectfully showeth, that on the 18th day of April, 1851, he entered into a contract with Lieut. Colonel Thomas Swords, a quartermaster in the army of the United States, acting for and in behalf of the United States, which contract is in the words and figures following, to wit:

"Articles of agreement made and entered into at St. Louis, the eighteenth day of April, anno Domino one thousand eight hundred and fifty-one, between Lieut. Colonel T. Swords, quartermaster United States army, of the one part, and Joseph Clymer, of the State of Missouri, of the other part.

This agreement witnesseth, that the said Thomas Swords, quartermaster for and on behalf of the United States, and the said Joseph Clymer, for his heirs, executors and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other, as follows, to wit:

"1st. That the said Joseph Clymer shall receive at Fort Leavenworth, on the Missouri river, at any time between the first day of May and the thirty-first day of July, in each of the years one thousand eight hundred and fifty-one, and one thousand eight hundred and fifty-two, respectively, such stores, whether of clothing, subsistence, ordnance, building materials, or other property as may be delivered to him in good order by the assistant quartermaster, or other agent of the quartermaster department at Fort Leavenworth, and shall transport them with all despatch, and deliver them in like good order, and condition to the quartermaster or assistant quartermaster at El Paso, in the State of Texas, Doña Ana, Don Fernando de Taos, in the Territory of New Mexico, according to the instructions he may receive from the assistant quartermaster at Fort Leavenworth, at the time the stores to be transported may be delivered to him.

"2d. That the said Joseph Clymer shall transport such above mentioned stores as may be delivered to him for transportation, in good strong wagons, well covered with two new substantial duck covers, no wagon to be loaded with more than five thousand pounds, (in addition to the provision of the teamster,) and each wagon to be drawn by six yoke of good strong work cattle, or five pairs of good strong mules.

"3d. That all the means of transportation to be used by said Joseph Clymer under this agreement, shall be submitted to the assistant quartermaster at Fort Leavenworth, for his inspection, and such only shall be used as he may accept as fit for the trip.

"4th. That the said Joseph Clymer shall employ at least one man in addition to the teamsters, for every five wagons in each train; each man to be well armed and equipped, and provided with ammunition.

"5th. That the said Joseph Clymer shall have a train in readiness to receive freight and to start from Fort Leavenworth at any time between the first day of May and the thirty-first day of July, in each of the years eighteen hundred and fifty-one and eighteen hundred and fifty-two, due notice having been previously given to him, by the party of the first part, of the amount of stores to be transported, and of the time when the train must be in readiness to start.

"6th That the said Joseph Clymer shall pay, at the rate of the first cost, to the United States, with the further amount of fifty *per centum* in addition, for any damage or deficiency, at the point of destination, in the property delivered to him for transportation, unless it shall be satisfactorily shown by the report of a board of officers, which the assistant quartermaster shall call for, that the damage or deficiency was unavoidable.

"7th. That the said Joseph Clymer shall be paid out of the office of the assistant quartermaster at Fort Leavenworth, at the following rates, to wit: ($12 84) twelve dollars and eighty-four cents per hundred pounds for all freight delivered by him at El Paso, Texas; ($12 50) twelve dollars and fifty cents per hundred pounds for all freight delivered at Doña Ana, New Mexico; ($8 83) eight dollars and eighty-three cents for all freight delivered at Fernando de Taos, New Mexico; on his producing the receipt of the assistant or acting quartermaster of the post at which the stores are delivered, for the quantity delivered, and his certificate that they were delivered in good order; or if damaged, that the damage was reported on by a board of officers, as provided for in the 6th article of this agreement.

"In testimony whereof the undersigned have hereunto placed their hands and seals this eighteenth day of April, one thousand eight hundred and fifty-one."

"THOS. SWORDS, *Q. M.* [L. S.]
"JOSEPH CLYMER. [L. S.]

"In presence of—
"JAMES MCKAY,
"WADSWORTH RAMSAY."

Your petitioner further shows that the aforesaid agreement was made, pursuant to a public notice given by the said Lieut. Colonel Swords, dated at the office of the quartermaster, in the city of St. Louis, January 7, 1851, and published in the newspapers printed and circulated in the State of Missouri, whereby bidders were notified that they would be required to bid for the transportation of thirty tons and upwards to Fernando de Taos, New Mexico; of thirty tons and upwards to Doña Ana, New Mexico; and of one hundred and seventy tons and upwards to Paso del Norte, in Texas,—and they were required by said notice distinctly to understand, that the above specified quantities were the *minimum* quantities to be transported, but that every contractor should be prepared to carry larger quantities than the said minimum, for each of the two years mentioned in said agreement.

Your petitioner further shows that his original bid, made pursuant to the notice aforesaid, had reference only to the transportation of stores, &c., to El Paso and Taos, but that, after the same was made and accepted, he was solicited by Maj. E. A. Ogden, assistant quartermaster at Fort Leavenwotrh, by a letter dated February 26, 1851, to extend his contract so as to embrace also the transportation to Doña Ana, in New Mexico, and he consenting thereto, the contract was so drawn.

Your petitioner further shows that on the 24th of April, 1851, he entered into an agreement with David Waldo, Jabez Smith, and William McCoy, also of the State of Missouri, whereby, in consideration of certain matters between them and your petitioner, he transferred to them all the benefit accruing from said contract, and all the advantages and privileges appertaining thereto, except to the amount of transportation of 150,000 pounds, or 75 tons, to the post of Paso del Norte, which amount was to be transported alone by your petitioner, and to be for his own particular use and benefit, and under his entire control;

and it was also further agreed between said Waldo, Smith and McCoy and your petitioner, that your petitioner was to receive and transport the stores intended for the post of Taos, leaving the said Waldo, Smith and McCoy to transport only all the stores to Paso del Norte and Doña Ana, except the 150,000 pounds retained, as aforesaid, to be transported to Paso del Norte by said petitioner; by which the said Waldo, Smith and McCoy were to transport 190,000 pounds, or 95 tons, to Paso del Norte, and 60,000 pounds, or 30 tons, to Doña Ana. But your petitioner states that this was a private agreement between him and said Waldo, Smith and McCoy, of which the United States had no notice.

Your petitioner further shows, that he and his associates aforesaid, had, under said contract, a just right to expect, and did, in fact, expect, that they would be supplied by the quartermaster's department, according to the stipulations of said contract, with the following amounts of freight for each of the years 1851 and 1852, to wit:

To Paso del Norte 150,000 pounds, at $12 84.....	$19,260 00
To Toas 60,000 pounds, at $8 80.....	5,298 00
Which, according to said agreement between said Waldo, Smith, and McCoy, were retained for transportation by your petitioner alone; and the following to have been transported by them, to wit:	
To Paso del Norte 190,000 pounds, at $12 84.....	24,396 00
To Doña Ana 60,000 pounds, at $12 50.....	7,500 00
Making a total per annum of.....	56,454 00
Total for the two years 1851 and 1852.....	112,908 00

Yet your petitioner says that in the year 1851 he was furnished by the said quartermaster's department only with the following freight for transportation under said contract, to wit: 150,141 pounds to be transported to Paso del Norte, and 61,135 pounds to be transported to Doña Ana. He left Fort Leavenworth with said freight in May, 1851, and delivered the freight for Paso del Norte at that post on the 26th August, 1851, in good order and condition; that intended for Doña Ana he delivered, according to a subsequent agreement, in good order, at Fort Fillmore, fifteen miles south of Doña Ana, on the 25th October, 1851, having left Fort Leavenworth, with the said last named freight, on the 30th July, 1851. For this freight transported in the year 1851, your petitioner received pay at the contract price, that is, the sum of $26,778 11, or thereabouts; whereas, if he had been furnished with all the freight that he was entitled to by said contract, he would have transported the same, as he was ready and willing to do, according to the terms of said contract, and would have been entitled to be paid the additional sum of $29,677 89, which would have made the sum that he was entitled to be paid for that year $56,454, as aforesaid.

Your petitioner further shows that he was subjected to great loss in getting ready to comply with the conditions of said contract, that were to be performed on his part—for both the years 1851 and 1852. That

he purchased the necessary number of wagons, oxen, &c., and hired the necessary number of men, and laid in the necessary quantity of provions, &., according to said contract, to transport the said minimum amount of freight that was to be transported by him to El Paso Del Norte, for the year 1852, at a very great cost, to wit: at about the sum of $25,000, and had the same on hand ready to execute his said contract at the proper time therefor. But he alleges the fact to be that after he had made all the necessary arrangements aforesaid, to wit: on the 22d March, 1852, Major E. A. Ogden, assistant quartermaster at Fort Leavenworth, addressed him a letter, wherein he notified your petitioner that he was directed by the Quartermaster General to inform your petitioner that he would not be required, during the then coming season, to transport any stores under his said contract of the 18th April, 1851, which letter your petitioner received a few days after the same was written. When your petitioner received said notice, to wit: on the 6th April, 1852, he informed the said Major Ogden, by letter, that he had prepared a train of thirty wagons and oxen, for the purpose of fulfilling his part of said contract, and that, in consequence of said notice, he must sustain a heavy loss; therefore he must look to the department for an indemnity for said loss, in consequence of the non-performance of said contract on the part of the department; he also begged him to reflect on the subject of a fair settlement of the heavy investment he had been put to. But your petitioner was left without remedy to enforce the compliance with said contract by the officers of the quartermaster's department, and his outfit, which he had prepared for the occasion, was thrown upon his hands, at a great and most ruinous sacrifice.

He begs leave to embody herein, and to submit in detail, an account of the expenses to which he was actually subjected, that your honors may be enabled to judge of the extent of the injury he has sustained, to wit:

30 wagons, at $180 each	$5,400 00
2 wagons for provisions, at $180 each	360 00
64 new wagon sheets, at $10 each	640 00
3 barrels rosin, at $5 each	15 00
3 barrels, 750 lbs., tallow, at 10 cents per lb	75 00
15 tar buckets, at $1 50 each	22 50
3 jack screws, at $3 each	9 00
8 mess boxes, at $3 each	24 00
8 sets cooking utensils, at $15 each	120 00
8 new tents, at $10 each	80 00
8 water kegs, at $2 each	16 00
1 set wagon-maker's tools	35 00
192 yoke of oxen, at $55 per yoke	10,560 00
192 ox-yokes, at $3 each	576 00
192 log-chains, at $3.50 each	672 00
3 mules, at $75 each	225 00
2 horses, at $85 each	170 00
5 saddles and bridles	75 00
12,960 lbs. flour, at $3 per cwt	388 80

9,000 lbs. bacon, at 10 cts. per lb	$900 00
10 bushels beans, at $3 per bushel	30 00
200 lbs. rice, at 10 cts. per lb	20 00
10 galls. vinegar, at 50 cts. per gal	5 00
3 sacks, 480 lbs., coffee, at 14 cts. per lb	67 20
3 bbls., 750 lbs., sugar, at 10 cts. per lb	75 00
32 teamsters, 6 mos. each, at $20 per mo	3,840 00
4 extra teamsters, at same	480 00
1 conductor, 6 mos., $80 per mo	480 00
1 assistant conductor, at $50 per mo	300 00
38 new rifles, at $20 each	760 00
38 cartridge boxes, at $1 50 each	57 00
5 kegs powder, at $6 50 per keg	32 50
500 lbs. lead, at 10 cts. per lb	50 00
Contingent expenses, for ox-whips, traveling expenses, &c., in buying up outfit	500 00
Amount paid Messrs. Keller and Russel for compromise on the contract for transportation to Taos	500 00
	27,560 00

Your petitioner further shows that after the said contract was abandoned by officers of the United States, he made sale of such of the aforesaid articles as could be sold, with the utmost diligence and at the best prices, but had much difficulty in doing so in consequence of the fact that the same were collected beyond the frontier of Missouri, in what is now the Territory of Kansas, where no market could be found therefor. But he also submits in detail an account of said sales, to wit:

10 wagons, cost $200 for repairs after two years' exposure, sold for $600—less the repairs	$400 00
6 wagons, without repairs	320 00
2 " "	100 00
3 " "	120 00
The remainder were worthless.	
192 log-chains	180 00
100 ox-yokes	75 00
92 " no sale.	
2 mules, $40 each	80 00
1 " strayed and not found.	
1 horse	55 00
1 horse died.	
5 saddles, no sale.	
202 oxen, sold in St. Louis	5,200 00
152 " sold in the country	1,724 00
12,980 lbs. flour, all spoiled.	
900 lbs. bacon sold for	250 00
10 bus. beans, no sale.	
200 lbs. rice, no sale.	

10 galls. vinegar, no sale.	
3 sacks coffee sold for.....	$22 00
3 bbls. sugar.....	31 00
32 teamsters, compromised at two-thirds their time.....	1,920 00
2 extra hands " " "	180 00
1 conductor " " "	180 00
1 ass't conductor " " "	100 00
38 rifles sold for.....	250 00
38 cartridge boxes, no sale.	
5 kegs powder sold for.....	20 00
500 lbs. lead.....	15 00
3 bbls. rosin, no sale.	
3 bbls. tallow sold for.....	27 00
15 tar buckets, no sale.	
3 jack screws, no sale.	
8 mess boxes, no sale.	
8 sets cooking utensils sold for.....	30 00
8 tent cloths—3 sold for.....	9 00
8 water kegs sold for.....	8 00
1 set wagon maker's tools.....	15 00
64 wagon sheets, only 25 sold, for.....	75 00
	11,386 00

But your petitioner was put to great expense on account of the aforesaid cattle, as follows:

Feeding 384 head, and herding and penning 7 mos. at 5 cts. per head, for 210 nights.....	$4,224 00	
30 head, died.....	825 00	
Expenses of driving to market.....	900 00	
Which should be deducted.....		5,949 00
Net proceeds of sales.....		5,437 00

To recapitulate: Your honors will see that the account of your petitioner, for actual expenditure on account of said contract, and the failure of the United States, stands thus:

Amount expended.....	$27,560 00
Amount of sales.....	5,437 00
Net amount of expenditure.....	22,123 00

But your petitioner respectfully shows that he is entitled to recover of the United United States greatly more than the aforesaid sum of $22,123, on his own and on account of Messrs. Waldo, Smith and McCoy, to whom he must account upon his private agreement with them, if anything is allowed on account of the interest they held by said agreement. The aforesaid sum of $22,123 was expended by

himself upon the execution of that part of said contract retained by him. As he performed the trip to Paso del Norte in 1851, and was equally ready to perform that to Taos, he submits that he is entitled to be allowed, on his own account, the value of transporting the 60,000 pounds to the latter place, or $5,298. As he was fully ready, as he has already shown, to comply with his contract in 1852, and was prevented from doing so by the default of the quartermaster's department, he also submits that he is entitled to receive the full price for the transportation of the 150,000 pounds to Paso del Norte, or $19,260, and the 60,000 pounds to Toas, or 5,298, as the just and equitable measure of damages to be paid him by the United States, as follows:

Net amount of expenditure	$22,123 00
Freight to Taos for 1851	5,298 00
Freight to Paso del Norte for 1852	19,260 00
Freight to Taos for 1852	5,298 00
	51,979 00
But your petitioner thinks that he should be allowed for direct injury to his business and credit from 1st May, 1852, to 1st January, 1858—the most of the time being engaged in disposing of the foregoing outfit, and attending to this business—say	5,000 00
Also interest on the sum actually paid out by him, that is $27,560, for, say 3 years	4,950 00
Total he should be paid	61,929 00

But your petitioner, claiming also on behalf of the said Waldo, Smith and McCoy, insists that he is also entitled to recover for that part of the said contract which he assigned to them, as follows:

For 189,859 pounds of freight that should have been furnished for Paso del Norte in 1851	$24,379 89
Same in 1852	24,379 89
60,000 pounds for Doña Ana in 1852	7,500 00
	56,259 78
To which add as above	61,929 00
Total	118,188 78

Your petitioner states that the item of $500 paid to Messrs. Keller and Russel, by compromise, arose as follows: To supply deficiencies in his means of transportation occasioned from casualties in the year 1851, he, on the 24th March, 1852, agreed to purchase of Kelley and Russel, 10 wagons, at $150 each, to be delivered by the 4th April, 1852, and 45 yoke, or 90 cattle, at $55 per yoke, and he was, after he was notified that said stores would not be furnished him for transportation, compelled to pay them the said sum of $500 to be released therefrom.

Your petitioner further shows, that in 1852, after the said contract was violated, and to save himself from bankruptcy and ruin in consequence thereof, he applied to the Secretary of War for just and proper relief, and the matter was referred by him to the Quartermaster General of the United States. But no final action was had thereon by the executive or accounting officers of the United States, until the same was, on the 27th December, 1854, fully reported upon by the Third Auditor of the Treasury, whose report, on the 29th December, 1854, was concurred in by the Second Comptroller of the Treasury; which said report and concurrence are herewith filed and made a part hereof, marked exhibit A.

In pursuance of the opinion of the Third Auditor that it was competent only for Congress to grant the necessary relief, your petitioner prepared a memorial to the Senate and House of Representatives, which was, on January 2, 1855, introduced into each House. In the Senate, the same was referred to the Committee on Military Affairs, but no final action was had thereon, the said committee being engaged in preparing a report in favor of making an allowance to your petitioner at the adjournment of the last session, 4th March, 1855. In the House of Representatives, the said memorial was also referred to the Committee on Military Affairs, and said committee, on February 23, 1855, made a report submitting as a part thereof the report and views of the Third Auditor and the Second Comptroller of the Treasury, and accompanied the same with a joint resolution authorizing the accounting officers of the treasury to settle the claim upon the principles of equity and justice.—(See report, No. 110, House of Representatives 33d Congress, 2d session, and Joint Resolution No. 59, same session.)

All of which your petitioner respectfully submits, and prays that he may be awarded against the United States, such an amount of damages as he may be entitled to recover, according to the principles of equity and justice, and he will ever pray, &c.

JOSEPH CLYMER.

By LUKE LEE, and
R. W. THOMPSON,
His Attorneys.

STATE OF INDIANA, }
Vigo County. }

Be it remembered that this day personally came before me, the undersigned, a notary public in and for said county, George W. Ewing, who being duly sworn says that he verily believes that the matter and things set forth in said petition of Joseph Clymer are true in substance and matter of fact.

GEO. W. EWING.

In testimony whereof, I have hereunto set my hand and notarial seal at Terre Haute, in said county this 29th December, A. D. 1855.
[L. S.]

A. B. CRANE,
Notary Public.

COURT OF CLAIMS.

JOSEPH CLYMER, *vs.* THE UNITED STATES.

In behalf of the petitioner, the undersigned, of counsel for him respectfully submit the following, as the grounds upon which they ask a recovery against the government:

I. The advertisement published in the newspaper at Independence, Missouri, (see Appendix A,) inviting proposals for the transportation of stores to Fernando de Taos, Doña Ana, and El Paso del Norte, in New Mexico, is to be treated as having the same force and effect as if it were inserted in the contract with the petitioner; or—

II. It is to be treated as a notice to the petitioner that he should be read to transport the minimum quantity of stores specified in the contract at all events. Why not the former? It is the basis of the proposals invited from bidders—the inducement held out to them to bid. In the absence of it they would not have known what they were bidding for, or how to graduate the prices to be paid them. It expressed what the government desired to have done, and promised on its part that it would furnish, at all events, thirty tons of freight to Ferando de Taos, thirty tons to Doña Ana, and one hundred and seventy tons to El Paso del Norte, in all 460,000 pounds, estimating the ton at 2,000 pounds, provided proposals were made. In view of this promise, the petitioner and others made their bids. In view of it also the contract with the petitioner was, of course, made. And, although the contract does not contain, in so many words, a stipulation that this shall be the minimum quantity, yet, being so made, the government cannot escape the obligation to furnish this quantity.

In construing this contract we must be governed by general and established rules of law, for the government, when a party to a contract with a citizen, is, in no way exempt from those ru es—it possesses no power of absolutism. One of them is, that where one writing refers to another in relation to the same subject matter, both are to be taken together to ascertain the meaning.—(McIver's lessee *vs.* Walker, 4 Wheat., 444; Jackson *ex dem* Lowell *vs.* Parkhurst, 4 Wend., 374.)

And this reference from one writing to another need not be in direct and express terms; it may be indirect, or by implication only.—(4 Phill. on Ev., Cow. & Hill's notes, 1,421 note 958 to p. 547.) So writings connected by necessary implication with a promissory note may be referredto, to show that the note was conditional.—(Hunt *vs.* Livermore, 5 Pick., 395; Davlin *vs.* Hill, 2 Fairf., R. 434; Heywood *vs.* Perrin, 10 Pick., 228.) This is not in conflict with the admitted doctrine, *litera scripta manet*, which excludes all extraneous evidence to add to or vary the terms of a written instrument, but is received to explain and apply the writing.—(4 Phill. on Ev., 984; Cow. & Hill's Notes, p. 1467, and cases cited.)

In this case the quartermaster who made the contract was acting for the government, not for himself. He could not contract without

a previous advertisement for bidders, wherein he was required to specify the quantity of stores to be transported. Therefore, as he did not specify the quantity upon the face of the contract, the advertisement is connected, by necessary implication, with the contract, so that by reference to it we may ascertain the quantity contemplated. Any other view would recognize the contract as made on his personal account, and as giving him the right to furnish the stores for transportation or not, as was personally convenient to himself. Hence, we insist that the advertisement must be treated as though it were a part of the contract, for the purpose of ascertaining the minimum quantity of stores the government was bound to furnish.

But it must be so for another reason—that it is the custom of the government to advertise for bidders before such contracts are made, and specify in the advertisement the quantity to be transported. In such cases the advertisement becomes annexed as a customary incident to a written contract, although the contract does not refer to it.—(Dorsey *vs.* Eagle, 7 Harr. & Gill, 321; Stultz *vs.* Dickey, 5 Binn., R. 285; Carson *vs.* Blaze, 2 ibid, 487; Van Ness *vs.* Pacard, 2 Pet., R. 137.) The general rule is, that custom is always admissible in such cases, unless inconsistent with the written instrument.—(4 Phill. on Ev., C. & H.'s Note, 974, p. 1455.) It is applied to leases, and by it the tenant is entitled to the away-growing crop. And it is applied to other transactions besides contracts of lease, where known usages have been established, and is one of the admitted exceptions to the general rule—that a written contract shall not receive additions from parol evidence. "The cases go on the principle of a presumption, that, in such transactions, the parties did not mean to express in writing the whole of the contract by which they intended to be bound, but to make a contract in reference to these known usages."—(4 Phill. on Ev., C. & H.'s Note, 974, 1,456; Hutton *vs.* Warren, 1 M. & W., 466; Boorman *vs.* Johnson, 12 Wend., 574.) Certain customs have become incorporated with the general law of the country, which add incidents to contracts that are not expressed, and often supply a meaning apparently in direct contradiction of the terms used; (4 Phill. on Ev., C. & H.'s Note, 974, 1,456;) for example, a note drawn at sixty days is payable at sixty-three.

Judge Story says: "The true and appropriate office of a usage is to interpret the otherwise indeterminate intention of the parties, and to ascertain the nature and extent of their contracts, arising not from express stipulations, but from mere presumptions and implications, and acts of a doubtful nature.—(Schooner Reeside, 2 Sumn. R. 569–'70; 2 Green. on Ev., § 251. See also authorities collected by Cow. & Hill, 4 Phill. on Ev., 1,409.) And usage may even be proven to influence the construction of a contract, though contrary to some general rule of law.—(Renner *vs.* Bank of Columbia, 9 Wheat., 581, 584, 585.)

But when, as in this case, the usage corresponds with the general law, the contract is made with reference to both. Where there is no custom to control it, it is made with reference to the law only existing at the time.—(Story's Con. of Laws, 225, 226, 227.)

In such cases the law must control the contract. So where there was a *clean bill of lading*, parol evidence was refused to show a contemporaneous parol agreement that goods should be stored *on deck*, because the law required them to be stored *under deck*. That was held to be "the judgment of the law upon the face of the instrument," and hence a part of the contract —(Creery *vs.* Holly, 14 Wend., 30; Barber *vs.* Brace, 3 Conn., R. 9; S. P. Thompson *vs.* Ketcham, 8 John., R. 189; Hunt *vs.* Adams, 7 Mass., 518; Pattison *vs.* Hull, 9 Cow., 747.)

In cases of the kind now before the Court, it has been the custom of the government—pursuant to the requirement of the statute—to advertise for bidders, specifying the quantity of stores to be transported. These contracts are made with reference to this custom, and, therefore, it must control them. Hence, if the contract itself does not state the quantity, we must look to the advertisement to ascertain it. As the law regulates this matter, by requiring that advertisements for proposals shall precede the contract, and by rendering void all contracts made without them, therefore, the advertisement is a part of the contract so far as it is necessary to explain what does not distinctly appear upon its face.—(See App. B.)

But the advertisement must be treated as if it were a part of the contract, to the extent indicated, for still another reason. It has been decided that where the whole of a contract has not been reduced to writing, the part omitted may be proven by parol.—(Hunt *vs.* Adams, 6 Mass., 519, 524. Barker *vs.* Prentiss, ibid, 434. McCullock *vs.* Girard, 4 Wash., C. C. R. 292, 293.) We concede, that to admit this proof, it must appear that the writing does not express the whole agreement. In all cases where it does not do so, the proof may be made.—(Commissioners *vs.* McCalmont, 3 Penn., R. 122.)

It is not necessary, however, that the writing itself should expressly rebut the presumption of completeness.—(Jeffrey *vs.* Walton, 1 Stark., R. 267. In that case, the contract was "*six weeks at two guineas*," and Lord Ellenborough held it incomplete upon its face, but conclusive as far as it went. He would not permit the time of hiring, nor rate of payment to be contradicted, but admitted proof of an agreement to be responsible for accidents, as a supplementary part of the written contract. So where there was an agreement in writing for the sale of an interest in a mill for a specified sum, in an action for the puchase-monoy, parol evidence was admitted to show, that the sum stipulated in the agreement was exclusive of the expenses of building, &c.—(Kelly *vs.* Dickson, 2 Blackford, 236.)

In Bradley *vs.* the Washington and Georgetown Steam Packet Company, 13 Pet., R. 94, this doctrine was examined at length by the Supreme Court; and after consideration, parol evidence was admitted of the nature of the transaction, and what the parties understood in reference to it, to explain an agreement in writing to pay for the use of a steamboat. The writing was simply an obligation to pay money for the hire of the steamer until another was put upon the route, and the evidence admitted went to show that the obligee was a contractor for carrying the mail—that when the Potomac was frozen

in the winter he carried it in post-coaches, and that it was closed by ice soon after the contract was made; these facts were held to limit the liability, though the other boat had not been put upon the route—the closing of the river by ice terminated the hiring.

In Missouri, it has been decided that when the county commissioner directed a contract pledging a particular fund, and the contract was made binding the county, the contract could be explained by the order on the record, and so controlled by it, as that it could not bind the county.—(Pettis county *vs.* Kingsbury, 17 Mis., 479.)

Now, it is apparent that the whole of the contract here has not been reduced to writing. As it stands, it is for the transportation of such stores, or other property as "may be delivered," and is signed by a quartermaster of the United States army. The stores to be delivered were *government* stores, and no other. And if these only, no officer could deliver them except upon a contract made pursuant to custom and law, by which an advertisement is required, specifying the quantity to be transported. Consequently, as the contract does not, and the advertisement does specify the quantity, the former is incomplete without the latter, and the latter must be referred to. We think that this conclusion cannot be escaped.

But if it can, then the advertisement is certainly a notice, or equivalent to a notice; that the contractor must be ready, at the appointed time, to transport the *minimum* quantity; that is the number of tons specified in it. See how emphatic are its terms: "It is distinctly understood that the above specified quantity are the *minimum*," &c. The contract required that notice should be given of the quantity to be transported and of the time, within the designated dates. That is, notice was to be given of whatever amount should be transported above the quantity which the advertisement required should be covered by the proposals. Does it not follow, then, that as no such notice was given, the advertisement is to stand as such for the quantity specified in it? Any other view would subject the government to the imputation of unfairness, of holding out inducements to the performance of an act, and after performance, or after preventing it by its own policy, refusing to recognize them as obligatory upon itself. Is it not easy to see that the bidders in this case, regulated their prices by the quantity to be transported; that they would transport the 460,000 pounds to the points designated for a less sum per pound than they would transport *a smaller* quantity to the same points? And would it not be absurd to suppose that they would have contracted at any price, and have expended large sums of money to get ready for the trip, when the question of going at all, or of being paid a cent of remuneration, were left wholly contingent upon whether or no they should receive subsequent notice? Hence, we must be brought to the conclusion that in the view of the immediate parties to the contract, the government was bound to furnish the quantity named in the advertisement.

Upon this view of the case, the Third Auditor has based his reasoning, and it is adopted by the Committee on Military Affairs of the House of Representatives. He concedes that, under the contracts,

Clymer "had a right to expect" 150,000 pounds of freight for each of the years 1851 and 1852, to Paso del Norte, and 60,000 pounds to Taos, and Waldo & Co., 190,000 pounds to Paso del Norte, and 60,000 pounds to Doña Ana. Why had they this *right?* Of course, because the promise held out in the advertisement, that these quantities were to be transported at all events, was the inducement to the contract. And he makes his proposition plain and unanswerable by an argument, which we beg leave to adopt, wherein he expresses his views of the kind of notice provided for by the contract.—(*See report of Committee on Military Affairs, House of Representatives, 2d session, 32d Congress, report No.* 110, *p.* 7.)

If this principle shall be established by the Court, the following calculation, made by the Auditor, will show what were the quantities to be furnished and their prices, to wit:

To Paso del Norte, Clymer, 150,000 pounds, at $12 84 per 100 pounds	$192,60 00
To Paso del Norte, Waldo & Co., 190,000 pounds, at $12 84 per 100 pounds	24,396 00
To Taos, Clymer, 60,000 pounds, at $8 80 per 100 pounds	5,298 00
To Doña Ana, Waldo & Co., 60,000 pounds, at $12 50 per 100 pounds	7,500 00
Total per annum	56,454 00
Total for the two years, 1851–'52	112,908 00

This, then, being the quantity that the government was bound to furnish, and it being conceded that *none* of it was furnished, we assume:

III. That the United States is bound to compensate the contractor in damages for the injury sustained by him, in consequence of the breach of the contract, in not furnishing the foregoing quantity of stores to be transported.

We concede the difficulty of arriving at a precisely accurate conclusion upon this branch of the case, but will endeavor to present such views as are sanctioned by the law; premising only with the remark, that, in all cases, sounding in damages much must necessarily be left to judicial discretion.

We all agree that damages may be both *actual* and *consequential*, and that when the latter, they must be the *natural and proximate consequence.*—(2 *Green. on Ev.*, §256; *Sedg. on Dam.*, *chapter* 3.)

By the civil law they are called *present*, where the reparation may be known, and regulated by a view of the events which have actually transpired; and *not present*, when they depend on future and uncertain events, and when the reparation is to be estimated before those events happen. So, if you interrupt the lease of a farmer, who has a lease for a year, just before harvest, he shall be allowed for the loss he suffers by not being allowed to gather his crop on the ground, which is present and easily estimated. But if his lease be for several years, he shall be allowed for the loss sustained by not enjoying his farm for the

remainder of his term. And in estimating this latter damage, there must be considered "the events which this farmer might have reason to hope for or fear, according to the quality of the fruits or revenues which this farm yielded." Because it is *possible* that he might have made nothing, it is no reason why a reparation of damages should not be made to him. The whole doctrine of the civil law, therefore, may be summed up and reduced to this, "that the reparation of damages ought to be regulated by a view of the cause of the damage, and of the events which are consequences of it."—(1 *Cushing's Domat*, 1929–'30–'31.)

The civil law is said to be the "great fountain of equity," and from this fountain has been drawn the principle laid down by Grotius and his commentator, Rutherford, that, "in estimating the damages due for a thing unjustly taken or withheld, we are to consider not only the thing itself, but the value likewise of its fruits, or profits, netly arising therefrom."—(Grotius, b. ii., chap. xvii., sec. iv; Ruth. In., 39.)

In our opinion, these principles agree with those of the common law, which are the most approved, and constitute the foundation upon which they rest. There is some conflict in the decisions, but two leading modern cases have laid down what we consider the correct doctrine. In the first, it is decided that the damages for a breach of contract are such profits as would have accrued to the party from the contract if it had been performed.—(Fox *vs.* Harding, 7 Cush., 516.) The court in this case draw a very just and striking distinction between proximate and remote or speculative damages. They say that the profits which form a proper item of damages are those which would have accrued and grown out of the contract itself as the direct and immediate result of its fulfillment, but that those that are too speculative to be allowed are such as would have been realized by the party from other independent and collateral undertakings, although entered into in consequence and on the faith of the principal contract. They decide that the cost and expenses of the work and material should be estimated, the contract price deducted, and the price of labor and materials supplied towards the completion of the contract then added.

In the other, the direct question before the court was, whether profits could be allowed by way of damages for the termination of the contract by one of the parties? And the court say that they could be. They defined profits to be "the gain which the plaintiff would have made if he had been permitted to complete his contract." Speaking further of this kind of profit, they say, "for this he expends his time, exerts his skill, uses his capital, and assumes the risks which attend the enterprise. And to deprive him of it, when the other party has broken the contract, and unlawfully put an end to the work, would be unjust. There is no rule of law which requires us to inflict this injustice. Wherever profits are spoken of as *not* the subject of damages, it will be found that something contingent upon *future* bargains, or speculations, or states of the market are referred to, and not the difference between the agreed price of something contracted

for and its ascertained value or cost.—(See Masterton *vs.* Mayor of Brooklyn, 7 Hill's R., 61, and cases there referred to.) We hold it to be a clear rule that the gain or profit, of which the contractor was deprived by the refusal of the company to allow him to proceed with and complete the work was a proper subject of damages."—(Philadelphia, Wilmington and Baltimore R. R. Co. *vs.* Howard, 13 Howard, 344.)

These principles are in analogy to those of the civil law, and directly apply to this case; and in our view of them and of the facts of the case, they bring us to the result which we now submit.

First, then, as to the interest retained by Clymer, the petitioner.

One of the immediate and direct results of the fulfillment of the contract by him was the expenditure of a large sum of money to get the train ready for the transportation of the stores. For this he should be allowed, after crediting the government with the net amount produced by the sale of the articles purchased. To this should be added the profits he would have made if he had performed the service, of which there is proof in the depositions. The account may be thus stated:

Amount expended in getting ready to execute the contract	$27,560 00
Deduct the net proceeds of the sale of oxen, materials, &c	5,437 00
Net amount expended	22,123 00
Add amount of profit lost by violation of contract by the government	14,205 00
Amount due Clymer	36,328 00

Then as to the interest assigned by Clymer to Waldo & Co.

They were to carry 40,000 pounds more to Paso del Norte than Clymer was, and the same quantity to Doña Ana that Clymer was to carry to Taos. As the proof shows the same rate of profit, it is easy to arrive at the true amount of damages upon that part of the contract.

If the transportation of 150,000 pounds by Clymer give an expenditure of 27,560, then 190,000 by Waldo & Co. will give	$34,909 00
If $22,123 be the loss upon the $27,560 expended by Clymer, then the loss upon $34,909 expended by Waldo & Co. is	$28,022 00
To this add profits	27,889 00
Amount due Waldo & Co	55,911 00

If this calculation be adopted, then we arrive at the following result:

Due on the part of the contract retained by Clymer.....	$36,328 00
Due on part assigned to Waldo & Co.....	55,911 00
Total sum.....	92,239 00

The Court must either adopt the measure of damages here claimed, or, in lieu of it, that which allows *dead* freight.

We all understand what *dead* freight is—that it is the whole contract price, treating the contract as executed and the freight delivered at the point agreed on. *Prima facie*, a party who contracts to deliver freight at a particular place, and is prevented by the other contracting party, is entitled to the *whole* compensation agreed on; because a tender and offer to perform is equivalent to a performance.—(Shannon *vs.* Comstock, 21 Wend., 457.) It is precisely analagous to the case where a party contracts to work a year or any other given time for a stipulated sum, and is prevented by the other—he is entitled, *prima facie*, to the compensation agreed on; but if he has received other compensation for his services from others during the year, that shall be deducted from the sum to be paid.—(Costigan *vs.* Mohawk and Hudson R. R. Co., *vs.* Hudson, 2 Denio, 609; Hecksher *vs.* McCrea, 24 Wend., 304; 6 Attorney General's Opinions, 516.) So, precisely, in cases of freight. Where a merchant engages to furnish a given quantity for a ship he must pay *dead* freight for the failure to furnish it—deducting whatever may have been received from other persons for freight taken in lieu of the amount stipulated to be furnished.—(Abbott, 277–8.) For rule in reference to compensation for part performance and indemnity for loss in respect to the part of a contract unfinished, see also Shannon *vs.* Comstock, 21; Wend., 457; Wilson *vs.* Martin, 1 Denio, 602; Spencer *vs.* Halstead, 1 Denio, 606; Clark *vs.* Messiglia, 1 Denio, 317; Durkee *vs.* Mott, 8 Bart,, 423; Chamberlin *vs.* McAilister, 6 Dana, 352; Walworth *vs.* Pool, 6 Eng., (Arkansas,) 394.

It is to be observed in reference to all this class of cases, that the question whether the party who has been prevented from performing his contract has received compensation from other persons during the time he had to execute the contract, is one of *fact*, and that it may be proved as matter of defence in mitigation of damages. If it is not proved, or has not been received, then *dead* freight is recoverable, and is the true and only measure of damages if the rule we have claimed in reference to profits be rejected. Here there is no pretence that any such state of case existed. The fact is that, as to Clymer himself, he has done nothing of consequence since but press his claim upon the government. It has broken him up entirely, and put it out of his power to engage in profitable business of any kind.

If this rule be adopted the damages can be easily ascertained—they are the contract prices for the whole freight, thus:

For Clymer.....	$49,116 00
For Waldo & Co.....	63,792 00
Total.....	112,908 00

And this brings us to another question of more difficulty—which is, whether or no *interest* should be allowed upon the amount of money expended by these parties, *for and on account of the United States*, in preparing to execute this contract—that is upon the $62,469, which is the aggregate of the sum expended.

The question is of the greatest importance, whether the United States is in any case liable for interest for money laid out and expended upon, and in the execution of a contract, the performance of which the government has prevented, and as there is no act of Congress directly authorizing it, the right to it must be maintained, if at all, upon other than statutory grounds.

By the act organizing this Court it is the duty of the Court not only to find the facts in all the cases before them, but to apply the law to those facts. What law? If there be a statutory law applicable to the case that must be applied, because that must govern. But if there be no statutory law, then the common law must be applied, because under the Constitution the principles of that law, so far as they are applicable, have been adopted. They are to be applied to all matters of which a *court* can take cognizance, because when a *court* is created it is, under the Constitution, required to adopt the principles of the common law, unless there is something to the contrary in the act creating it. There being nothing of this sort in the act creating this Court, it is, therefore, a common law and equity court, and must, in controversies with the government, adopt the rule laid down by Judge Baldwin in the case of the United States *vs.* Arredondo, 6 Peters, 711, "decide as between man and man on the same subject matter." These are the rules which Congress has prescribed: that is, by not prescribing any other, these are the rules that must prevail. What then are the rules of the common law in reference to the allowance of interest?

In England the general doctrine is, that upon simple contracts, interest is not an incident to the debt, unless there is an agreement to that effect, either express or implied, although money has been unjustly denied, or improperly withheld, even in cases of fraud. Where there has been long delay in payment, and the withholding of money has been vexatious and oppressive, it may be allowed, by a jury, as *damages*. This power was expressly given to juries by the statutes of 3 and 4 W., because in such cases interest is not an incident to the debt. This statute was applied to *foreign* judgments, as in Bunn *vs.* Dalzell, 2 C. & P. 376. But the authorities sustaining these positions are reviewed by this Court, in the case of Todd *vs.* The United States.

But we submit that the doctrine established in this country does not go to this extent against the allowance of interest. It agrees with the English doctrine, that it cannot be recovered upon unliquidated claims, and that in some cases where it is not an incident to the debt—as where money has been unreasonably and vexatiously withheld—it may be allowed as damages. But then the analogy ceases.

The case of Crockford *vs.* Winter, 1 Camp. 129, has been overruled in Dodge *vs.* Perkins, 9 Pick. 369, where the S. C. of Mass., held that where money was obtained by fraud, the law required the party to pay it over immediately, and implied a promise to pay interest if he

did not. So also in Wood *vs.* Robbins, 11 Mass., 506; and in Fowler *vs.* Shearer, 7 Mass., 14, the doctrine was applied to cases where money was lawfully obtained and misapplied, as by an attorney. The same rule was applied in Pennsylvania, where an agent had refused to render an account for an unreasonable time. Crawford *vs.* Willing, 1 Dallas, 349; also in N. Y. in Williams *vs.* Stoors, 6 John., C. R. 353. In that State it has been likewise settled, that interest is to be allowed for money received or advanced for the use of another "after a default in payment."—(Campbell *vs.* Mesier, 6 John., C. R. 24.) And such we suppose the law to be in all the States.

In the case already referred to, of Dodge *vs.* Perkins, Judge Putnam reviews both the English and American authorities, and adopts the opinion of Lord Thurlow, in Boddam *vs.* Ryley, 1 Bro. C. C., 239; and 2 Bro. C. C., 2, wherein he came to the conclusion, that "all contracts to pay, undoubtedly give a right to interest from the time when the principal ought to be paid." He then proceeds to say: "We have no statute regulating this subject, and none is necessary upon the principles of the common law; we think it clear that interest is to be allowed where the law, by application, makes it the duty of the party to pay over the money to the owner without any previous demand on his part. Thus, where it was obtained and held by fraud, interest should be calculated from the time when it was received. So, where there has been a default of paying according to agreement, express or implied, to pay on a certain day, or after demand, or after a reasonable time."

"The nature and extent of the undertaking must depend upon the facts proved in each particular case. But when it is ascertained at what time the money should have been paid, the law raises a promise to pay damages for the detention after the breach of the contract. For it is the essence of every assumpsit or undertaking, that it is to be performed specifically, or that damages shall be paid for the non-performance."

Judge Putnam had previously reviewed the English rule in Wood *vs.* Robbins, and established the same doctrine as in Dodge *vs.* Perkins. He then referred, approvingly, to the case of Elkins *vs.* the East India Company, 1 P. Will., 396, where it was decided that the rule in *equity* was to allow interest for money had and received, or money lent.

Upon the principles, then, settled in the American cases, we think it quite clear, that whenever it is the duty of a party to pay over money, and he does not do it, interest is recoverable. Such is the case where A. pays money at the request and for the use of B. In such cases the law not only implies the duty to pay it back, but an agreement to pay interest for withholding it. So it has been held in Massachusetts.—(Gibbs *vs.* Bryant, 1 Pick., 118; and also in New York. Rensallear Glass Factory *vs.* Reid, 5 Cow., 602.)

For cases in which the question of the payment in interest is fully discussed, see Jacobs *vs.* Adams, 1 Dallas, 50; Dilworth *vs.* Sinderling, 1 Binney, 494; Commonwealth *vs.* Crevor, 3 Binney, 121; Gillett *vs.* Mainard, 5 John., 88; Pease *vs.* Barber 3 Caines, 266; People *vs.* Gasherie, 9 John., 71; Winthrop *vs.* Cartelon, (and cases

cited,) 12 Mass., 4; Walker *vs.* Bradley, 3 Pick, 261; Reab *vs.* McAllister, 8 Wend., 109; Wood vs. Hickok, 2 Wend., 501; Rensallear Glass Factory vs. Reid, 3 Cow., 436, and 5 Cow., 596; (this is a leading case;) Chitty on Con., (4 Am. Ed.,) 506; Rapelie vs. Emery, 1 Dallas, 349; Brown vs. Campbell, 1 Searg., & R., 179; Campbell vs. Mesier, 6 John., C. R., 24; Bealz vs. Guernsey, 8 John., R. 446; Amory vs. McGregor, 15 John., R. 38; Taylor vs. Knox, 1 Dana, 398; King vs. Diehl, 9 Searg. & R., 409; Graham vs. Williams, 16 ibid, 257; Fashalt vs. Read, 16 ibid, 266; Selden vs. James, 6 Randolph, 465; Brockenborough vs. Blythe, 3 Leigh, 619; Hart vs. Brand, 1 A. K. Marshall, 161; Harrison vs. Long, 4, Desaus, 110.

This is precisely the condition of the parties in this case. The money expended in the execution of this contract was expended for the use and at the request of the government, and it was the duty of the government to indemnify the party immediately, and that without demand. The obligation to pay interest for not doing so, is implied. Therefore we think it should be allowed, not upon the unliquidated damages, but upon the net amount actually expended, and from the date of the expenditure. If it were not so, the rights of individuals would not be safe when depending upon the justice of the nation. And there should be no higher degree of justice than that which a nation—more especially one like ours—deals out to its own citizens. In vain would it seek applause by demanding of foreign governments just indemnity for wrongs done to those who, from whatever cause, have temporarily expatriated themselves, if, in its domestic intercourse with its citizens at home, it shall deny them full and ample redress, according to the just measure of the law, for injuries inflicted by its own agents. This justice may be now expected, because the rules by which it is to be secured and dispensed are to be settled by a judicial tribunal, in whose hands *alone* can the balance be evenly and impartially held. *This Court,* in settling these rules and dispensing this justice, drawn from the pure fountain of the law, have it in their power to illustrate the truth of a well known sentiment, that, if all other departments of the government shall fail, the great principle of morality and good government may still find security in a firm, independent, and consistent judiciary.

F. P. STANTON,
R. W. THOMPSON,
Attorneys for Petitioner.

WASHINGTON, *December*, 1856.

APPENDIX.

A.

QUARTERMASTER'S OFFICE, ST. LOUIS, MISSOURI,
January 7, 1851.

Sealed proposals will be received at this office, corner of Washington avenue and Second street, until the 15th day of February next, for the transportation of army supplies to the places named below, for two years, commencing on the 1st of May, 1851.

Annually.

To Fort Kearny, on the Platte, fifty-four tons and upwards.

To Fort Laramie, eighty tons and upwards.

To Fort Mackay, at the crossing of the Arkansas, Santa Fé trail, fifty-four tons and upwards.

To Fernando de Taos, New Mexico, thirty tons and upwards.

To Santa Fé, one hundred and thirty tons and upwards.

To Albuquerque, New Mexico, fifty-seven tons and upwards.

To Doña Ana, New Mexico, thirty tons and upwards.

To Paso del Norte, New Mexico, one hundred and seventy tons and upwards.

Separate proposals will be received for each of the above routes, or bids may include two or more; but in each case the contractor will be required to bind himself to receive at Fort Leavenworth, at any time during the months of May, June, and July of each year, such army stores, whether of clothing, subsistence, ordnance, or other government property, which may there be delivered to him or his agent, suitably packed and prepared for transportation, to be by him delivered in like good order at the place or places agreed upon.

It is distinctly understood, that the above specified quantities are the minimum, and every contractor should be prepared to carry larger quantities, of which due notice will be given.

The bids will state the price for the transportation of every hundred pounds, and every bid must be accompanied by the guarantee of some responsible person as to the good faith and ability of the bidder for the performance of the contract.

The privilege is reserved to reject any or all the bids, if deemed to the public interest to do so.

No transfer or assignment of bids will be admitted or recognized, and no bid will be accepted from any individual or firm, if he or they put in more than one bid.

THOMAS SWORDS,
Lieut. Col. and Quartermaster, U. S. A.

B.

Regulations of the quartermaster's department:

"No. 42. All purchases and contracts for supplies or services for the army, except personal services, when the public exigencies do not require the immediate delivery of the article or performance of the service, shall be made by *advertising* a sufficient time previously for proposals respecting the same."

"No. 48. The advertisement and the bids received, shall be sent with the contract to the bureau."

IN THE COURT OF CLAIMS.

ON THE PETITION OF JOSEPH CLYMER.

Brief of the United States Solicitor.

On the 7th day of January, 1851, Lieutenant Colonel Swords of the quartermaster's department, published the following advertisement:

QUARTERMASTER'S OFFICE,
St. Louis, Mo., January 7, 1851.

Sealed proposals will be received at this office, corner of Washington avenue and Second street, until the 15th day of February next, for the transportation of army supplies to the places named below, for two years, commencing on the 1st of May, 1851.

Annually.

To Fort Kearny, on the Platte, fifty-four tons and upwards.
To Fort Laramie, eighty tons and upwards.
To Fort Mackay, at the crossing of the Arkansas, Santa Fé trail, fifty-four tons and upwards.
To Fernando de Taos, New Mexico, thirty tons and upwards.
To Santa Fé, one hundred and thirty tons and upwards.
To Albuquerque, New Mexico, fifty-seven tons and upwards.
To Doña Ana, New Mexico, thirty tons and upwards.
To Paso del Norte, New Mexico, one hundred and seventy tons and upwards.

Separate proposals will be received for each of the above routes, or bids may include two or more; but in each case the contractor will be required to bind himself to receive at Fort Leavenworth, at any time during the months of May, June, and July of each year, such army stores, whether of clothing, subsistence, ordnance, or other government property, which may there be delivered to him or his agent, suitably packed and prepared for transportation, to be by him delivered in like good order at the place or places agreed upon.

It is distinctly understood, that the above specified quantities are the minimum, and every contractor should be prepared to carry larger quantities, of which due notice will be given.

The bids will state the price for the transportation of every hundred pounds, and every bid must be accompanied by the guarantee of some responsible person as to the good faith and ability of the bidder for the performance of the contract.

The privilege is reserved to reject any or all the bids, if deemed to the public interest to do so.

No transfer or assignment of bids will be admitted or recognized; and no bid will be accepted from any individual or firm, if he or they put in more than one bid.

THOMAS SWORDS,
Lieut. Col. Quartermaster, U. S. A.

On the 15th of January, 1851, Colonel Swords enclosed a copy of this advertisement to Mr. Clymer, and Mr. Clymer made a bid which was the lowest offer for transportation to two of said posts, and it was therefore accepted in a letter of the 15th July, 1851; and Clymer was also invited in the same letter to take the transportation to the other posts also; he did so, and the agreement made between the parties was afterwards, on the 18th April, 1851, formally reduced to writing, and is as follows:

Articles of agreement made and entered into at St. Louis, the eighteenth day of April, A. D. one thousand eight hundred and fifty-one, between Lieutenant Colonel T. Swords, quartermaster United States army, of the one part, and Joseph Clymer, of the State of Missouri, of the other part.

This agreement witnesseth, that the said Thomas Swords, quartermaster, for and on behalf of the United States, and the said Joseph Clymer, for his heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other, as follows, to wit:

1st. That the said Joseph Clymer shall receive at Fort Leavenworth, on the Missouri river, at any time between the first day of May and the thirty-first day of July, in each of the years one thousand eight hundred and fifty-one, and one thousand eight hundred and fifty-two, respectively, such stores, whether of clothing, subsistence, ordnance, building materials, or other property, as may be delivered to him in good order by the assistant quartermaster, or other agent of the quartermaster's department at Fort Leavenworth, and shall transport them with all despatch, and deliver them in like good order and condition to the quartermaster or assistant quartermaster at El Paso, in the State of Texas, Doña Ana, Don Fernando de Taos, in the Territory of New Mexico, according to the instructions he may receive from the assistant quartermaster at Fort Leavenworth at the time the stores to be transported may be delivered to him.

2d. That the said Joseph Clymer shall transport such above-mentioned stores as may be delivered to him for transportation, in good strong wagons, well covered with two new substantial duck covers, no wagon to be loaded with more than five thousand pounds, (in addition to the provision of the teamster,) and each wagon to be drawn by six yoke of good strong cattle, or five pairs of good strong mules.

3d. That all the means of transportation to be used by said Joseph Clymer under this agreement shall be submitted to the assistant quartermaster at Fort Leavenworth, for his inspection, and such only shall be used as he may accept as fit for the trip.

4th. That the said Joseph Clymer shall employ at least one man, in addition to the teamsters, for every five wagons in each train, each man to be well armed and equipped, and provided with ammunition.

5th. That the said Joseph Clymer shall have a train in readiness to receive freight and to start from Fort Leavenworth at any time between the first day of May and the thirty-first day of July, in each of the years eighteen hundred and fifty-one and eighteen hundred and fifty-two, due notice having been previously given to him, by the party

of the first part, of the amount of stores to be transported, and of the time when the train must be in readiness to start.

6th. That the said Joseph Clymer shall pay, at the rate of the first cost, to the United States, with the further amount of fifty *per centum* in addition, for any damage or deficiency, at the point of destination, in the property delivered to him for transportation, unless it shall be satisfactorily shown by the report of a board of officers, which the assistant quartermaster shall call for, that the damage or deficiency was unavoidable.

7th. That the said Joseph Clymer shall be paid out of the office of the assistant quartermaster at Fort Leavenworth, at the following rates, to wit: ($12 84) twelve dollars and eighty-four cents per hundred pounds for all freight delivered by him at El Paso, Texas; ($12 50) twelve dollars and fifty cents per hundred pounds for all freight delivered at Doña Ana, New Mexico; ($8 83) eight dollars and eighty-three cents for all freight delivered at Fernando de Taos, New Mexico, on his producing the receipt of the assistant or acting quartermaster of the port at which the stores are delivered, for the quantity delivered, and his certificate that they were delivered in good order; or if damaged, that the damage was reported on by a board of officers, as provided for in the sixth article of this agreement.

In testimony whereof the undersigned have hereunto placed their hands and seals this eighteenth day of April, one thousand eight hundred and fifty-one.

THOS. SWORDS, *Q. M.* [L. S.]
JOSEPH CLYMER. [L. S.]

In presence of—
JAMES MCKAY,
WADSWORTH RAMSAY.

Under this contract there was nothing forwarded in 1852, the claimant being notified in March, 1852, that this would be the case. In 1851, 107 tons were transported, of which 77 = 154,000 pounds were forwarded to El Paso, and 30 tons = 60,000 pounds to Doña Ana. For the transportation performed in the year 1851, the petitioner received full payment, and made no claim at that time that anything further was due him on account of the contract. But on the 1st of April, 1852, when he was informed that no transportation would be required during that year, he insisted, in a letter of that date to the quartermaster general, that by his contract he had a right to be employed or indemnified for his outlay, &c. He has subsequently claimed that, instead of 170 tons he should have received in 1851 at least 230 tons of freight, on which he would have earned $29,180 40, in addition to the sum which he had received, and that in 1852 he should have received the same amount of freight, and earned thereon $56,454; amounting in all to $85,634 40. And I believe he now claims this sum, deducting therefrom the amount which it would have cost him to transport 355 tons of freight, of which he claims that 123 tons should have been delivered to him in 1851, and the remaining 230 in 1852. It is said by one of the witnesses that the expense was about

fifty per cent. of the price agreed to be paid, and it is contended by the claimant's counsel that it was not so much. But even on this basis, the claim would be $42,322 as Mr. Jones makes it, or $42,817 as General Jesup makes it.

In support of this claim it is alleged "that the aforesaid agreement was made *pursuant* to" the advertisement above quoted; and it appears, from what follows, that on this allegation the inference is drawn by the claimant that the advertisement is part of the contract, and it is also insisted that the requirement in said advertisement that every contractor should be prepared to transport the quantities therein specified, at least, and larger quantities on due notice, is to be construed as a stipulation on the part of the United States to furnish at least the *minimum* amounts for transportation.

I. 1. Several reasons are assigned why the advertisement is to be regarded as part of the contract; the first is, that the contract refers to the advertisement, not expressly, but by necessary implication, because without such reference no determinate quantity is contracted for, and Clymer could not safely prepare to execute the contract. If this be a defect in the contract, it is one which is not obviated by recourse to the advertisement, which is also indefinite as to the quantity to be transported. But so far from its being necessary to the completeness of a contract for transportation that either the *minimum* or *maximum* as to quantity should be stated in it, that it is unusual to put stipulations respecting the amount in contracts with carriers. They generally contract, as Clymer did, by the pound or by the foot. But it may be said that Clymer's undertaking differed in some circumstances from that of ordinary carriers, and therefore some express provision as to the quantity was required to enable him to prepare to discharge it. This may be conceded without involving any necessity to look to extrinsic testimony to see how the parties had dealt with that point. The fifth article provides that due notice shall be previously given to Clymer of the amount of stores to be transported, and of the time when the train must be in readiness to start. The object of this provision was obviously to enable Clymer to prepare to execute his contract to transport all such stores as should be offered to him at Fort Leavenworth, and this was certainly ample provision against any unreasonable demand for transportation of him. Due notice (that is, reasonable notice under all the circumstances of the case,) was to be given to him of the amount of stores required to be transported. This did not require that Clymer should expend a dollar in preparing for transporting stores till he was notified of the extent of the preparations he should make, and if he did expend money without said notice, in anticipation that such service would be required on a great scale, he had no warrant in this contract to look to the United States for indemnity when it turns out that the United States did not require it.

If he had failed to comply with a call on him for transportation, it it would have been a complete defence that he had not received notice in time to enable him to procure the means of performing the required service. If it had been said the advertisement was notice that he must always have on hand sufficient means to transport 230 tons at least,

because it says that the contractor should be prapared to that extent, and that it was only as to any amount beyond that, that he was entitled to notice, he could have said, my contract omits all stipulations of that kind, and requires notice in all cases, and does not distinguish between the call for the transportation of 230 tons and that for 500 tons, except, that a less time would be due notice if the smaller amount was required, than would be due notice if the larger amount was required, because it would probably take less time to get it ready.

2. The other ground for making the advertisement part of the contract is, that it is *customary* for the government to advertise, and hence "the advertisement becomes annexed as a customary incident to a written contract, although the contract does not refer to it," and this is intended as an assertion that it is customary to consider the advertisement as part, and the controlling part too, of the contract. If the question was, whether there had been an advertisement, it would afford a ground for presuming one in this case, to show that it was customary, and the proof offered—the regulation requiring advertisements in certain cases—goes to no other point, and does not touch the question here, whether the advertisement is part of the contract. The allegation is, that it is customary to consider the advertisement as part of the contract. This is the allegation or it amounts to nothing. But as we have no proof of any custom to construe contracts with the quartermaster's department, so as to include the advertisements which may have lead to the making of them, and of allowing the terms of such contracts to be controlled by the terms of such advertisements, and there is no law or custom in fact, which makes the advertisements of the War Department control the contracts entered into by it, more than there is to make the preliminary negotiations between individuals, a part of the instrument which they have finally and deliberately chosen to express the terms of the agreement consummated between them.

3. The proof offered by Clymer is thought by the Third Auditor to show an equitable claim, although he concurs in the views I have above expressed on the conclusiveness of the contract, because he assumes that it shows there was a *mistake* committed in omitting a stipulation on the part of the United States to furnish 230 tons of freight to Clymer. But Clymer makes no allegation in his petition, that there was any such mistake committed in framing the contract, and I have not therefore felt called on to meet this supposed case, by taking the testimony of Colonel Swords, as I would have done had such an allegation been made by the petitioner. But he has not made such an allegation, and I am authorized to assume under the circumstances that he does not allege such a fact, because it was not true. He might insist, on the legal propositions on which he puts his case, that the advertisement was to be taken as part of the contract, on the advice of counsel, without doing anything wrong; but he could not allege as a fact, what the Auditor assumes, that a *mistake* had been committed in leaving out the stipulation in question, without committing perjury, if the statement was untrue. And there are facts in the case, aside from Mr. Clymer's refraining from asserting that there had been such a mistake, which show conclusively, that there was not only no such mis-

take committed in point of fact, but that Clymer did not construe the contract himself, at the time it was made, and for more than a year afterwards, as he would now have this Court to construe it. I allude to the fact in evidence, that less than half of what he now claims to have been the *minimum* amount of freight to which he was entitled under the contract was given him in 1851, without any complaint being then made that he was entitled to more. Nor does he even in his letter to the quartermaster general of the 1st of April, make any such claim. He says merely that he was prepared with 30 wagons, &c., to do the hauling, which was the same preparation he had made the year preceding, and we may therefore assume, that if the same amount of freight had been furnished, he would have been equally satisfied. It may be true that he was disappointed in fact; that he had some reason for supposing—whether from the advertisement, or the verbal statements of the officers, or their official estimates—that this amount of transportation would be required; and may, in consequence thereof, have made a larger preparation without waiting for the notice which his contract required, in order to warrant him in looking to the United States for indemnity. But, if he did so, it was his own improvidence, and he did it in his own wrong. Upon whom the loss is to fall, whether greater or less, depends on the legal effect of the contract, and whether it was there stipulated, that he should be furnished with 230 tons of freight by the United States, at the least. His own conduct, under the contract, proves conclusively, that he did not construe it as containing any such stipulation, and that that construction was invented afterwards, and resorted to only in order to meet a loss which had happened in consequence of the government's ceasing to require transportation across the plains, at a time when emigration had also greatly diminished, the effect of which was unexpectedly to deprive Mr. Clymer and others, engaged in this business, of their accustomed employment, and greatly to depreciate the value of the articles used for that purpose.

II. *As respects the measure of damages.*—If anything should be allowed, the case of the Philadelphia, Wilmington, and Baltimore Railroad Company *vs.* Howard, in 13 Howard, p. 344, cited by petitioner's counsel, seems to be applicable to this case, and that fixes the profits which the claimant would probably have made by transporting the freight if it had been furnished to him by the government, as the amount which should be allowed him. To determine this, we should have a detailed statement in proof of the expenses which would have attended the transportation, consisting of the cost of the outfit, that is, of the wagons and appurtenances, such as jack-screws, &c.; of the animals, oxen, mules, horses, &c.; of the provisions, and of the wages, &c., and also of the amount it would require to insure the freight. From the aggregate of these we should deduct the estimated value of the wagons and animals left on reaching New Mexico. This would give the expense of the transportation. This, deducted from the amount of the stipulated price, would give the profits.

The witness McKinney alone testifies on this point. In his deposition of April 16, 1853, which is printed in the appendix to Mr. Claude Jose's argument, addressed to General Jesup, he says "that he has

made a calculation showing the expense of fitting up and sending out said train; also the sum of money said wagons and teams would and ought to have brought on arrival in New Mexico; also, the amount of money which said Clymer was to get for the transportation of said freight—all of which deponent believes to be fair and correct, and is as follows:

Amount for transportation of freight - - - -	$20,280 00
Amount of sales for wagons and teams, at two hundred and sixty-five dollars per team, in New Mexico	8,250 00
	28,530 00
Less the expense of sending out the train, including value of oxen and wagons, hire of hands, provisions, until arrival in Mexico - - - - - -	14,325 00
Which leaves a balance of - - - -	14,205 00

"Deponent states that in the above calculation, the value of the oxen and wagons which said Clymer had on hand, and ready for the transportation of said freight, is put down as part of the expense incurred by Clymer in the sending out of said train, and deponent considers and believes are set down at a fair valuation."

This makes the profits $14,205 on the 107 tons, or $42,322 on the whole; which is 50 per cent. of the stipulated price.

But in another deposition he says, that he had seen Mr. Clymer's own account, viz: that on page 4 of the petition, and he believes that to be correct. Whether correct or not, Clymer is concluded by it. In this statement the outfit is put down at $27,560, instead of $20,280, as in McKinney's account, which makes $7,280 difference in the amount of the expense, and reduces the profits from $14,205 to $7,925 on the 107 tons. That is less than 25 per cent. of the price, and would make the profits on the whole $21,161, instead of $42,322, and certainly that would have been an ample profit.

M. BLAIR, *U. S. Solicitor.*

IN THE COURT OF CLAIMS.

JOSEPH CLYMER *vs.* THE UNITED STATES.

GILCHRIST, C. J. This case is as follows:

On the 7th of January, 1851, Lieutenant Colonel Swords, of the United States army, advertised for proposals for the transportation of army supplies for two years, commencing on the 1st of May, 1851. Among the places to which the supplies were to be transported were Fernando de Taos, Doña Ana, and Paso del Norte, all in New Mexico. The supplies for the first two places were to be thirty tons

and upwards, each, and to Paso del Norte one hundred and seventy tons and upwards. The advertisement also contained the following clause: "It is distinctly understood that the above specified quantities are the minimum, and every contractor should be prepared to carry larger quantities, of which due notice will be given. The bids will state the price for the transportation of every hundred pounds."

On the 18th day of April, 1851, the claimant made a contract with Colonel Swords, in writing, the substantial parts of which are the following:

By the first clause of the contract, the claimant agreed to receive at Fort Leavenworth at any time between the 1st day of May and the 31st day of July, in each of the years 1851 and 1852, such stores, &c., as might be delivered to him by the agent of the quartermaster's department at Fort Leavenworth, and transport and deliver them at the places before mentioned.

By the fifth clause of the contract, the claimant was to have a train in readiness to receive freight, and to start from Fort Leavenworth at any time between the 1st day of May and the 31st day of July, in the years 1851 and 1852, due notice having been previously given him of the amount of stores to be transported, and of the time when the train must be in readiness to start.

The seventh clause provided that the claimant was to be paid $12 84 per hundred pounds for all freight delivered at El Paso, $12 50 at Doña Ana, and $8 83 for the freight delivered at Fernando del Taos.

The petition alleges that by the advertisement bidders were notified that they would be required to bid for the transportation of thirty tons and upwards to Fernando del Taos and Doña Ana, and one hundred and seventy tons and upwards to Paso del Norte; and that the claimant had a right to expect that he would be supplied with 340,000 pounds of freight to Paso del Norte, and with 60,000 pounds of freight to Fernando del Taos and Doña Ana, each, amounting, in the whole, for the years 1851 and 1852, to the sum of 112,900; but that he was furnished with only 150,141 pounds for Paso del Norte, and 61,135 pounds for Doña Ana. For the freight transported in the year 1851 to Doña Ana he received the contract price, being the sum of $26,778 11, whereas if he had been furnished with all the freight to which he was entitled by the contract, there would be due him the further sum of $29,677 89. He alleges that he made all the necessary preparations for performing his contract to transport the minimum amount of freight for El Paso del Norte, which in the year 1852 cost him the sum of $25,000, but that after he had made all necessary arrangements, to wit: on the 22d of March, 1852, Major Ogden, the assistant quartermaster at Fort Leavenworth, informed him by letter that he would not be required to transport any stores during the then coming season. In answer to which, on the 6th of April, 1852, he informed Major Ogden that he was prepared to fulfill his contract, and must sustain a heavy loss in consequence of such notice. He furnishes a schedule of the expenses to which he was actually subjected, amounting to the sum of $27,560. Some of the articles mentioned in the schedule he sold for such prices as could be obtained for them beyond

he frontier of Missouri, which sales amounted to $11,386, from which hould be deducted the sum of $5,949 for expenses and loss of cattle, eaving the net proceeds of the sale only $5,437. He thus makes the amount of his expenditures to be the sum of $22,123 10. In addition to this he makes the following claim:

Freight to Taos for 1851	$5,298
Freight to Paso del Norte for 1852	19,260
Freight to Taos for 1852	5,298
This makes his claim amount to the sum of	51,979

to which, adding interest and damages for injury to his business, it amounts to $61,929.

It appears that the claimant had assigned a part of his contract to Messrs. Waldo, Smith, and McCoy, and upon that part of the contract he claims the right to recover the further sum of $56,259 78, making the whole amount of the claim $118,188 88.

It is contended, on the part of the claimant, that the advertisement in this case is to be regarded as a part of the contract, and that if it be not so, it is, at any rate, a notice to the contractor that the government will furnish for transportation, at the specified rates, the minimum quantities mentioned; that without referring to the advertisement, the contract is not intelligible; that in order to make the advertisement a part of the contract, the reference to it in the contract need not be express, but may be by implication; that it is an unreasonable construction of the contract that the claimant was to have ready a large number of wagons at a great expense, while the government were not bound to furnish him any employment for them; that the advertisement is to be regarded as aiding in the construction of the contract, and is to be considered as much a part of it as specifications for building a house are part of the contract for building it; that the reason why a minimum quantity is specified was, that the claimant need not keep his teams ready to transport more than the minimum unless upon due notice; and that, as the word *minimum* is not in the contract, unless reference is made to the advertisement it cannot be ascertained what the United States propose to the claimant to perform. It was also argued that, without the advertisement the fifth clause in the contract, providing for notice to the claimant of the amount of stores to be transported, is not intelligible, but with the advertisement it is easily understood; that as he was to have due notice of the amount, he was to be prepared, not to transport any indefinite quantity until he should receive notice, but only the minimum. The claimant's argument was not founded upon the position that extrinsic evidence was admissible to add to or vary a written contract, but it was asserted that the advertisement constituted a part of the contract, and that the two papers should be construed together.

There undoubtedly may be cases in which two separate papers may, by necessary implication, constitute one contract; and the material question here is, whether the advertisement is a part of the contract.

By the advertisement the United States say to the bidders, "for what sum will you contract to transport this freight?" It is, in substance, a notice to them of the subject-matter of a contract yet to be made, but it is not of itself a contract. It affords them such information as will enable them to make a contract with a due regard to a fair compensation. But the advertisement is no more a part of the contract than the same information would have been had it been communicated orally. It is one of those preliminaries which the law says are merged in the contract when it is made.

It is argued, that the fifth clause in the contract, providing that notice shall be given the claimant of the amount of stores to be transported, is unintelligible without the advertisement, and that this renders it necessary that it shall be considered a part of the contract. But there is no ambiguity in this clause. It is a simple and plain provision, which can be made no more intelligible than it now is by the addition of any other words; and if upon its face the language used is intelligible, we have no authority to examine the advertisement for the purpose of making those words ambiguous which are not so upon their face. There is nothing in the contract which refers to the advertisement or to any other paper as connected with the contract; and when the contract upon its face is easily understood, we are not authorized to go upon a voyage of discovery in order to ascertain whether the parties meant something more than is contained in the contract. With this view, our opinion is, that the claimant has not made out a legal cause of action against the United States, and, therefore, we cannot report a bill for his relief, which can be afforded only by Congress. There is no doubt that the advertisement was published, and the contract made, as alleged, and on the 22d of March, 1852, the claimant was informed, by Major Ogden, that he would not be required during the then coming season to transport any stores under his contract. It appears, also, that on the 24th of April, 1851, the claimant made a contract with Waldo, Smith, and McCoy, transferring to them all his interest in the contract, except for the transportation of 150,000 pounds to El Paso, and providing that the claimant should transport the stores for the ports of Taos and Rayado, unless the other parties should elect to transport them. By a supplement to this contract it was agreed, that Rayado not being included in amended contract made with Colonel Swords, Waldo, Smith, and McCoy, were only to receive and transport the stores for El Paso and Doña Ana, except the 150,000 pounds, which were to be transported by the claimant.

Several affidavits accompany the case, which were transmitted from the Treasury Depatment, and are now before us, the substance of which is hereinafter stated,

Nathan H. McKinney says, that in the year 1850 he went to Santa Fé, in charge of one of the claimant's trains, and also conducted a second train to El Paso; that he started in May and returned in November, 1851, for which the claimant paid him $80 per month and found him, and that for the same wages he was engaged to conduct the claimant's train for the year 1852; and that about the 10th of April, 1852, the claimant showed him the notice from Major Ogden, before

referred to; that before the date of the notice the claimant's train was prepared and ready to start; that the claimant's freighting to El Paso was profitable; that the freights the witness delivered for the year 1851 gave the claimant, in his opinion, a profit of more than 50 per cent., and that the year 1852 would have been equally if not more profitable; that the claimant was greatly injured by reason of the government failing to furnish any freight for the year 1852, and partly, also, for the last year; that for both years the claimant spared no necessary expense or labor to fulfil his contract, and that all the freight he received was delivered promptly, in good order, and without any unnecessary delay; tha tthe large ox-wagons used in this business are not suited to common business now that there is but little government freighting, and are of but little value, and that oxen have declined in price, and it is difficult to make cash sales of them.

Allen Clymer says that he went to Santa Fé, in 1850, with a train for the claimant, and also in the year 1851, when the business of said trains was carefully executed, and the government property received was delivered in good condition and without any unnecessary delay; that to secure the valuable services of Nathan H. McKinney, the claimant paid him $80 per month, about double the usual wages, and that the claimant spared neither expense nor labor to execute his contract for the delivery of the public stores faithfully and properly. This witness also says that by the refusal to furnish freight on the part of the government, the claimant sustained great damage, and that when the claimant was notified that the government would not furnish any freight, his train was then ready to start to El Paso, the train consisting of 30 wagons, and his oxen being then on hand, and his men all engaged about the 1st of April, 1852.

Nathan H. McKinney, in addition to his former affidavit, states as follows: "In the year of 1851 I conducted for said Clymer a train of 30 wagons, from Fort Leavenworth to El Paso, in New Mexico. All said wagons were freighted with government stores. I was in the employ of said Clymer as wagon-master of the train. I returned from New Mexico to Mr. Clymer's, in Cass county, Missouri, in the fall of the year 1851, with nearly all the said oxen and wagons, for the express purpose of making a like trip in the spring of the year following, 1852. I did this by express instructions from Mr. Clymer. Deponent further says that he is acquainted with the expense of wintering said oxen, and the repairing of said wagons; and deponent further says that he has seen an abstract of Clymer's accounts for transportation business, and from said accounts and his own knowledge of the matter believes that said Clymer, on the return trip, would have realized net profits to the amount of $14,000, and a little over, had the government furnished freight according to their contract. Deponent states that, after the receipts which said Clymer would have received from the government on the delivery of thirty wagon-loads of freight in Mexico, and which deponent sees, in said abstract, amounts to the sum of $20,280, and after adding thereto the amount of money which he would have received on the sale of said wagons and oxen in New Mexico, and which I believe may be fairly set down at the sum of $8,250, and then deducting therefrom the whole expense of sending

out said train, would have left said Clymer a net profit of something over $14,000, as before remarked, and which, deponent believes, he would have realized had he taken the government freight in 1852. Deponent states that he has made a calculation showing the expense of fitting up and sending out said train; also the sum of money said wagons and trains would and ought to have brought on arrival in New Mexico; also the amount of money which said Clymer was to get for the transportation of said freight; all of which deponent believes to be fair and correct, and is as follows:

"Amount for transportation of freight	$20,280 00
"Amount of sales for wagons and teams, at $275 per team, in New Mexico	8,250 00
	28,530 00
"Less the expense of sending out the train, including value of oxen and wagons, hire of hands, and provisions, until arrival in Mexico	14,325 00
"Which leaves a balance of	14,205 00

"The deponent states, that in the above calculations the value of the oxen and wagons which said Clymer had on hand, and ready for the transportation of said freight, is put down as a part of the expense incurred by Clymer in the sending out of said train, and deponent considers and believes are set down at a fair valuation."

Aaron Oxley states as follows: "I was employed by Joseph Clymer from the 1st of May, 1851, up to the 31st day of July, 1852, as superintendent of a drove of oxen. I went out to New Mexico in the summer of 1851 as herdsman, and returned in the fall of 1851, to Clymer's farm, in Cass county, Missouri. I had charge of a large drove of oxen during the winter and spring of 1852, feeding and preparing the oxen for a like trip in the spring of 1852, which Mr. Clymer intended to make in transporting freight to New Mexico. I know that Clymer had other droves in the country preparing in like manner; and I know that said Clymer was fully prepared to make a trip to El Paso, in New Mexico, with thirty large wagons and ox-teams in good order and condition; that all the teamsters necessary to take out said train had arrived on the ground fully prepared to start out on the trip, and that Clymer was put to great expense in disbanding said teamsters. After the said Clymer was notified by the officer of the government that he would not have any freight of the government to haul out to Mexico in the spring of 1852, I know that the notice did not reach Mr. Clymer until late in the month of April, 1852." He further states that he is acquainted with the expense of fitting up the train in order to make the trip in said spring of 1852; that he has looked at the statement made by the above mentioned Nathan H. McKinney, relative to the profits that would have been made on the said return trips, and concurs in said statement.

There is also a letter to the claimant, dated October 24, 1853, at Harrisonville, Missouri, signed by eight persons, bearing testimony to

the character and standing of McKinney, and also to his veracity and integrity, and stating, further, that they knew that, in the spring of 1851, he had charge of the claimant's train of thirty-six wagons, that he had frequently crossed the plains, had a high reputation for prudence, and was regarded as possessing capability and great experience.

James W. D. Boyer states that, for most of the time since the year 1848, he has been in the employ of Waldo & Co.; that he has seen the contract between the claimant and Waldo & Co.; that for both the years, 1851 and 1852, Waldo & Co. were provided with a large number of wagons and oxen, and ready to transport the public stores, as advertised, and expected to do so. That he is acquainted with all the details of freighting across the plains, and has fitted out trains of wagons for that purpose, and has acted as general agent for Waldo & Co., and believes that the transportation would have yielded them large profits, as both years were favorable for freighting, and by reason of being deprived of the freight they had sustained great damage.

Miles W. Benford says that during the year 1851 he knows that Waldo & Co. purchased a number of large wagons, and a large number of oxen, in addition to a large stock of each on hand before, in the expectation of transporting freight for the government; that he believes they were fully prepared to transport all that the quartermaster had advertised for, and that he knows they now have on hand a large amount of materials, wagons, oxen, &c., unemployed in consequence of the failure by the government to supply the freight they had reason to expect from the published advertisement.

Hiram N. Cummins says, that for the last three years he has superintended the trains of Waldo & Co., and is familiar with the operations; that they had provided largely for transporting freight for the government; that they had wagons and oxen enough to transport it; that they retained the same when they might have sold them, in the expectation of being daily notified to be in readiness to receive the freight at Fort Leavenworth, and that they were much damaged by not getting the freight, and by the loss of the profit which they might have made in transporting it.

The above affidavits are all *ex parte*.

The deposition of S. H. Woodson states that he has for several years been engaged in the freighting business, and is competent to state the value of the articles named in the following list:

30	wagons, at $180	$5,400 00
2	wagons for provisions, at $180	360 00
64	new wagon ———, at $10	640 00
8	new ———, at $10	80 00
8	water kegs, at $2	16 00
192	yoke of oxen, at $55	10,500 00
192	ox-yokes, at $3	576 00
192	log-chains, at $3.50	673 00
3	mules, at $75	225 00
2	horses, at $85	170 00
5	saddles and bridles	75 00
12,960	pounds of flour, at $3 per cwt	388 80

9,000	pounds of bacon, at 10 cts. per pound.....	$900 00
32	teamsters, at $20 per month, for six months.....	3,840 00
4	extra teamsters, at same.....	480 00
1	conductor six months, at $80 per month.....	480 00
1	assistant conductor, at $50 per month.....	300 00
		25,102 80

The witness also states that the articles mentioned in the claimant's petition, which are embraced in the above list, were worth the prices affixed to them in the petition and list; that these articles were necessary for a train of thirty wagons from Fort Leavenworth to the plains, specified in the claimant's contract; that the wagons for any other uses would be worth but little, though they could be used for agricultural purposes, but are not well adapted thereto, and when purchased therefor, were purchased at low prices, usually not more than Clymer has credited the United States with; that from having disposed of like articles under similar circumstances and general information as to their value, they are credited to the United States, in the petition, at about what they were worth and usually sold for. The market on the western frontier of Missouri, and near Fort Leavenworth, in the year 1852, was extremely dull for cattle suited to the Mexican trade or to transportation across the plains. The feeding and herding three hundred and eight-four head of cattle for two hundred and ten days was worth the amount charged, that is, $4,224, upon the supposition that they were well kept.

On his cross-examination he says that in the year 1852, there was but a small emigration to California from the western part of Missouri, and that the demand for stock and wagons was quite limited in that market.

The above is believed to be the substance of all the evidence before us.

As we have already said, our opinion is, that the claimant has no legal cause of action, and therefore we cannot report a bill for his relief, but the circumstances of the case are such as may properly be considered by Congress.

A careful analysis of the case is made by Mr. Atkinson, the Third Auditor of the Treasury, and concurred in by Mr. Brodhead, the Comptroller. Mr. Atkinson is of opinion that the claimant "having complied with all the stipulations entered into on his part, the government was bound to furnish the minimum quantities for transportation mentioned in the advertisement, and larger upon due notice of the amount to be transported, and the time when the trains must be in readiness to start; and having failed to do so, is liable to the claimant for whatever damages he may have sustained in consequence." Mr. Atkinson's opinion is, that the omission to insert in the contract the specified minimum quantities and the provision for larger was a *mistake*. But of this we are unable to find any evidence. The report of the Auditor was made a part of the report from the House Committee on Military Affairs, being report No. 110, 33d Congress 2d session, which committee reported a joint resolution authorizing the account-

ing officers of the treasury to settle the claim upon the principles of equity and justice.

Without expressing any opinion upon the proper sum, if any, which the claimant ought to receive, we submit the matter to the consideration of Congress.

¶

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 219.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States, in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

DENNIS CRONAN *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Claimant's brief on petition.
3. United States Solicitor's brief on petition.
4. Documents from the Treasury Department, filed by claimant and transmitted to the Senate.
5. Depositions, with exhibits, marked B, C, D, E, G, G g, and H, transmitted to the Senate.
6. Letters from Secfetary of the Treasury to Court of Claims, with copies of other letters and documents from that department, transmitted to the Senate.
7. Claimant's brief on trial docket.
8. United States Solicitor's brief on same.
9. Solicitor's brief on re-hearing.
10. Opinion of Court on first hearing, delivered by Judge Blackford, with Judge Gilchrist's dissenting opinion.
11. Opinion of the Court on re-hearing, delivered by Judge Scarburgh.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] of said Court at Washington, this first day of April, A. D. 1858.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

COURT OF CLAIMS.

DENNIS CRONAN *vs.* THE UNITED STATES.

To the honorable the Judges of the Court of Claims:

The petition of Dennis Cronan, a citizen of the State of Louisiana, shows, that on the 17th day of November, 1848, he entered into the following contract with the government of the United States:

STATE OF LOUISIANA, }
Parish of Orleans. }

Be it remembered, that on the 17th day of November, A. D. one thousand eight hundred and forty-eight, and of the independence of the United States of America the seventy-third, these public articles of agreement and contract, entered into at the city of New Orleans, in the parish and State aforesaid, before me, Francis N. Haralson, a notary public, duly commissioned, and qualified for the parish and State aforesaid, and in the presence of the witnesses hereinafter named, by and between Dennis Cronan, of this city, of the first part, and Dennis Prieur, Alice Labranche, and William M. Gwinn, of this city, herein acted in behalf of the government of the United States, in the capacity of commissioners for the erection of a custom-house at the port of New Orleans, duly constituted and appointed by virtue of the first section of the Civil and Diplomatic Appropriation act, approved March 3, 1847, and by virtue of the power and authority vested in the Secretary of the Treasury of the United States, in such cases made and provided, of the second part, witnesseth: That, whereas, in compliance with the acceptance on the part of said parties of the second part, of the proposal made by said party of the said party of the first part, of the 30th of October, 1848, to do all the hauling of the materials necessary to the building of said custom-house, said party of the first part doth hereby covenant and bind himself to and with said party of the second part, to do all the hauling of the building materials which may be deemed necessary for the erection of said custom-house, at the same rates, and agreeable with the tariff established by the general council of the city of New Orleans, on the 5th of June, A. D. 1843, in such cases, said party of the first part binding himself to do and perform said hauling, when thereto required, without prejudice to the progress of the work on said building, and at all times, and at such places as may be designated by the superintendent of said building, or by the architect thereof, to haul and deliver said materials, and in case said party of the first part fail in any respect to do and perform said hauling when thereto required, and in the manner hereinafter stated, then said party of the second part shall have the right to go out and employ others to do said hauling, and said party of the first by such failure or neglect shall forfeit to said party of the second part, the difference, if any, in price, which said party of the second part may have paid by reason of such default; and said party of the first part, as well as his surety in the bond to be by him given for the faithful performance of the stipulation of this

contract, shall forfeit and be responsible to said party of the second part for such damage as may have been incurred in the progress of the work on said building by reason of the default of said party of the first part in furnishing and delivering the materials when required, and said party of the first part doth hereby covenant and bind himself to and with said party of the second part:

1. To haul all the building materials, including the granite, and to deliver the same, when thereto required, at such points as may be designated by the superintendent or architect of said building, in good order, and free from all injury from hauling or otherwise. The granite to be delivered free from breakage or being soiled in its transmission from the levee to the site of the building.

And the said parties of the second part, acting in their capacity aforesaid, do hereby covenant and bind themselves to and with said party of the first part, to pay unto said party of the first part the same rate and amount per load for hauling said building materials as are established by the ordinance aforesaid, and now in force in this city, upon such subjects, except, however, as to the granite; said party of the second part agree and bind themselves to pay unto said party of the first part the same amount and rate per load as paid by the second municipality of the city of New Orleans for hauling the granite necessary for the new municipality hall, said rates, however, to be increased or diminished in proportion to the extra distance over which the granite shall or may be hauled for the custom-house, when compared with the distance over which the granite for the new munipality hall has been hauled, said payment to be made by said parties of the second part on the delivery of said building materials in accordance with the stipulations of the contract, or at such times as the contracting parties may agree upon hereafter.

Now it is expressly understood by these presents that the foregoing contract, and all the stipulations therein contained, are subject to the approval of the Secretary of the Treasury of the United States, and binding only in the event of his approval; and it is further understood by and between the parties here contracting, that the payments to be made said parties of the first part shall depend only upon the appropriations made by Congress, from time to time, for the completion of said custom-house.

Now, in order the better to insure the faithful performance of the foregoing stipulations, on the part of said party of the first part, it is expressly understood between the parties contracting, and said party of the first part doth hereby bind himself to furnish unto the government of the United States, on the signing, sealing, and delivery of these presents, his joint and several bond, with one or more good and sufficient surety or sureties, to be approved by said parties of the second part, in their capacity aforesaid, in the penal sum of ten thousand dollars, conditioned to comply in all respects with the stipulations of the foregoing contract.

Thus done and passed in my office, in the city of New Orleans, this eighteenth day of November, 1848, in the presence of William T.

Thompson and Randolph G. Smith, both competent witnesses, who have hereunto signed with the contracting parties, and me notary.

WM. M. GWINN,
DENNIS CRONAN,
D. PRIEUR,
ALICE LABRANCHE.

WM. T. THOMPSON,
R. G. SMITH.

F. N. HARALSON, *Notary Public.*

I certify the foregoing to be a true and faithful copy of the original contract, extant and of record in my office. Witness my signature and official seal this seventh day of May, A. D. 1850.

F. N. HARALSON, *Notary Public.*

That bond and security having been given by your petitioner, as therein provided, the said contract was submitted to the Secretary of the Treasury of the United States, and was approved by him. That to enable your petitioner to enter upon the duties arising out of said contract, a large sum of money was invested in mules, horses, carts, wagons, and wheels of enormous size and weight, for the use of which, in the streets of New Orleans, an extra tax was paid to the city, and that he had to incur a heavy daily expense so as to be prepared for any demand which might be made upon him under the contract.

That by the plain terms of the contract he was entitled to "do all the hauling of the materials necessary to the building of the custom-house" in said city. That his rights under the contract were fully recognized and respected by the commissioners with whom said contract was made. That, under a subsequent administration, new commissioners were appointed, to wit: S. J. Peters, Crockett, and Turnbull, who have violated the said contract, and injured your petitioner by entering into agreements with other parties for the delivery of "materials necessary to the building" at the site of said custom-house. Among others, a contract has been entered into with one Jules A. Blanc, a son-in-law of said Peters, for the delivery of one and a half million of bricks.

Your petitioner therefore charges that he is entitled to compensasion, at the rates agreed upon, for the hauling of all the materials thus delivered at the said building without his consent, and that his damage is to the full extent of such rates, amounting to about the sum of $9,263 25. That, as he had to keep up his establishment of horses, mules, wagons, carts, wheels, and other machinery, together with the proper complement of men for the working and superintending them, the violation of the contract in this particular is a loss to him, not only of an estimated profit, but the whole contract price of the hauling.

Your petitioner further alleges that he has performed in good faith all that was required of him by his contract, and that there is no justification on the part of the government for their breach of it; that, even if he had been at any time delinquent, which he denies, the contract furnished the rule by which such delinquency was to be made good, and would not have authorized the proceedings of the government.

Your petitioner further shows that upon the presentation of his claim to the Secretary of the Treasury, on the 28th of April last, it was refused payment solely upon the ground that the said contract was not "legally binding upon the United States since the close of 1849," because at that time the existing appropriation for building the custom-house had been exhausted. Your petitioner denies that the question of appropriation has any effect upon the validity of his contract, but, admitting that it has, your petitioner respectfully submits that as the exhaustion of the appropriation was a fact solely known to the government and its agents, it became their duty, upon the plainest principles of justice and law, to have notified him of the happening of such a contingency, to enable him to put an end to his daily outlay and expenditure.

Your petitioner charges that no such notification was given to him, but that, on the contrary, he continued long after the close of 1849 without any such knowledge, and, with the consent and approbation of the government and its agents, to do the work called for by the contract. To refuse payment for work done under the contract, or compensation for damages incurred by his adherence to it under these circumstances, would, as your petitioner submits, be unjust to him and discreditable to the government.

Your petitioner alleges that the building of the custom-house aforesaid was authorized by law, and that the contract made with him was an incident to the same, and did not require a special act of Congress, and does not therefore fall within the sixth section of the act of the 1st of May, 1820. That he claims only to do the hauling as long as Congress may continue by its appropriations to progress with the work, and to cease whenever they may choose to arrest it.

Your petitioner shows that the following appropriations have heretofore been made for this purpose:

March 3, 1845.	Plans and estimates	$500
" 3, 1847.	Construction	100,000
Aug. 12, 1848.	do	130,000
March 3, 1849.	do	150,000
May 15, 1850.	do	100,000
Sept. 30, 1850.	do	200,000
March 3, 1851.	do	250,000
Aug. 31, 1852.	do	150,000

The two last appropriations being on condition that "there shall be no material departure from the original adopted plan or materials contracted for."

Your petitioner further represents that he has not assigned away any portion of his interest in said contract, and that he is the sole owner thereof; he therefore prays that a judgment may be rendered in his favor for the said sum of money, together with the legal interest due thereon, according to the rate established by the laws of Louisiana.

P. PHILLIPS,
Solicitor for Petitioner.

WASHINGTON, D. C.

Personally appeared before me Dennis Cronan, who, being duly

sworn, sayeth that the facts set forth in the above petition are true according to the best of his information and belief.

T. C. DONN, *J. P.*

COURT OF CLAIMS.

DENNIS CRONAN *vs.* THE UNITED STATES.

Brief.

By the act of March 3, 1845, Congress appropriated the sum of five hundred dollars "for plans and estimates for the erection of a custom-house in the city of New Orleans, in front of the square now occupied for that purpose."—(U. S. Stat., vol. v., 761.)

By the act of March 3, 1847, another act was passed, appropriating $100,000 "for the construction of a custom-house in the city of New Orleans, to be erected on a square of ground on which stands the building now used as a custom-house in said city."—(U. S. Stat, vol. ix., 165.)

On the 12th of August, 1848, $130,785 "for continuing the construction of the custom-house at New Orleans."—(U. S. Stat., vol. ix., 296.)

On the 3d of March, 1849, $150,000 "for continuing the construction of the custom-house at New Orleans."—(U. S. Stat., vol. ix., 364.)

On the 15th of May, 1850, 100,000 "for continuing the construction of the custom-house at New Orleans."—(U. S. Stat., vol. ix., 589.)

On the 3d of March, 1851, $250,000 "for continuing the construction of the custom-house at New Orlens: *Provided,* That there shall be no material departure from the original adopted plan or materials contracted for: *And provided further,* That to better enable the commissioners to comply with this proviso, that the architect and author of said plan be employed to furnish all information, &c.; that the said architect shall be appointed by the President, by and with the advice and consent of the Senate, and no other person shall be employed at a salary or per diem allowance on said building, except the operatives under the direction of said architect."—(U. S. Stat., vol. ix., 609.)

On the 31st of August, 1852, $150,000 "for continuing the construction of the custom-house at New Orleans, subject to the limitations and restrictions" imposed in the last appropriation.—(Pamphlet Acts, p. 87.)

These acts show that—

1st. Congress had on the 3d of March, 1845, undertaken to build a custom-house in the city of New Orleans.

2d. That it was to be constructed according to a certain plan, and estimates adopted or recognized by them.

3d. That the general superintendence of the building was entrusted to commissioners.

4th. That no person but the architect should be employed at a salary or per diem, except operatives, &c.

The first appropriation of 3d of March, 1847, it is true, uses the words "for the construction," but that the true meaning was towards the construction, will not be denied. All the subsequent appropriations show this intention, being for "continuing the construction.

Looking to the whole of these acts which are in *pari materia*, and the construction would be the same as if Congress had passed an act with the recital: "whereas Congress recognizing the propriety of erecting custom-house in the city of New Orleans, and having approved the plan and estimates therefor submitted by the Secretary of the Treasury, hereby adopt the same plan and estimates, and for the purpose of commencing the said building, the sum of $—— is hereby appropriated."

If these acts do not declare the legislative will to erect a custom-house in New Orleans, language has no meaning. If the legislative will to this end is clearly expressed, then the building of the custom-house was provided for by law within the meaning of the act of 1820: for law is nothing else but organized legislative will.

Under such circumstances it became the duty of the Executive to see that this legislative will or law was fully executed. His authority is derived from the Constitution of the United States, which makes him the agent of the legislature. If the law had directed the building of a custom-house, without any limitation as to plan or cost, the Executive would have been free to enter into contracts for such a building as he deemed best. In the present case, however, the general power of the Executive is restrained by the legislative adoption of a plan, estimate, and character of materials. These constitute his rule; he can neither alter the one nor exceed the other. In all other matters relating to the construction of the custom-house, he is perfectly free to enter into such contracts as in his opinion may be necessary and proper to fulfill the design of Congress.

From the general power of the Executive substract the limitations by Congress, and we find there still remains to the Executive a wide field of duties in reference to this subject.

By the terms of the contract the claimant was to do the hauling when required by the government. His right to perform his services were dependent upon the fact that the government was in the position to require them; and his payment for those services were made to depend "upon the appropriations made by Congress, from time to time, for the completion of said custom-house."

It is evident that such a contract as this, dependent upon the action of Congress for the labor performed, is not obnoxious to any proper policy in the administration of the government.

The act of 1820, section 6, prohibits the Secretary from making a contract, "except under a law authorizing the same, or under an appropriation adequate to its fulfillment."

The objection to the validity of the contract arises out of the error of supposing that it has not been made "under a law authorizing the same." The quotation of the various acts show that the law has adopted certain plans and estimates, and authorized the appropriations made to be used in erecting the building. The contract is therefore clearly under authority of law.

An appropriation, however, for a certain work, may vest the same authority, and impose the same duty on the Executive as a law directing the work. Where a specific law is passed for the execution of a certain work, the provisions of the law itself will show how far the legislature desire to guard and prescribe it. In reference to the authority of the Executive as derived from appropriations, the act of 1820 imposes a general limitation that no contract should be made, except such appropriation be adequate to its fulfillment. Now what was the object of this provision? Clearly, that the government should not be made liable for more than it chose to appropriate.

So is the language of the opinion of the Attorney General, quoted by the Solicitor.—(Clifford's Opinion, vol. IV, 603.) "The object of the law of 1820 was to prohibit the executive department from involving the government in contracts for the payment of money beyond the amount appropriated by the law-making power."

Where the government has given no other evidence of its desire or design to execute a work than by an appropriation of a certain sum of money, then the Executive has no power by contract to exceed it. The proviso in the act has no reference to the duration of a contract, but only as to its amount.

The words of the proviso are "adequate to its fulfillment." It is not pretended that the appropriation in question was not adequate to the fulfillment of this contract. By the contract the payments were made dependent upon the appropriations; when they were not "adequate" the payments were not to be made.

The case of the Bensons was a verbal contract, entered into with Mr. Badger as Secretary of the Navy, for the transportation to the Pacific of emigrants and naval stores. The violation alleged was that the government had sent within the time stipulated for, stores by other means of transportation. The question having been submitted to the Attorney General, he rested the case upon the ground of *res judicata*, the claim having been rejected by a former Secretary, Mr. Bancroft, he says: "without, therefore, considering whether the stipulation for the transfer of emigrants to Oregon so far entered into the consideration of the alleged contract, and was so intermably blended with its provisions as to make it illegal and void under the act of May, 1820. I am of opinion that for the reason assigned the claim should be rejected."—(Attorney General Opinion, vol. V, 30.)

If the contract for the conveyance of naval stores had been itself illegal, the Attorney General would have said so, but the strong intimation is that if it had unconnected with the transportation of emigrants, it would have been unobjectionable.

Congress subsequently (March 3, 1849, vol. IX U. S Stat., 793,) passed a joint resolution authorizing the Secretary to settle this claim upon the principles of justice and equity—and the demand was paid.—(See Opinions, vol. V, p. 28, 31.)

In the report made by the Naval Committee of the Senate, March 3, 1851, No. 319, it is said: "That the claims of the petitioners arose under an alleged violation of a contract made with them by the Navy Department, in 1841, whereby they undertook, in furtherance of a national policy entered upon by the then executive administration,

pursuant to a cabinet decision, to establish a line of transport ships to the Oregon Territory, conveying fifty passengers by each trip without charge, upon the condition that they should have the benefit of transporting all the government supplies to the Pacific, at the rate of $3 per barrel freight. The arrangement was specified in a confidential letter from the then Secretary of the Navy to the president of the board of navy commissioners, and in a written statement also confidentially put on file by President Tyler. This arrangement was violated by a subsequent Secretary of the Navy, who, without any notice to the petitioners, deprived them of the right of transporting a large part of the supplies destined for the Pacific, and to the transportation of which they were clearly entitled. By this act of ill faith on the part of the government the petitioner suffered large damage."

This is the only case I have been able to find, where a contract of the kind has been drawn in question, and the decision against it seems to have turned upon the fact that it was connected with stipulations which made the whole illegal, to wit: the transportation of emigrants.

But let us assume that this contract rests alone upon the authority derived from the appropriation. The contract was entered into in November, 1848 Prior to this, Congress had appropriated the sums of $100,000 and $130,758. It is not denied that the contract is a legal one, and such as was proper to be entered into, but it is contended that the contract was terminated by a contingency *dehors* the contract itself—to wit: the exhaustion of the appropriations existing at the time it was entered into. It is admitted that a contract, without regard to its duration, could have been legally made, provided the appropriation was "adequate to its fulfillment." Let us now suppose that when this contract was entered into, there was an appropriation of $100,000, and that by a calculation it was ascertained that the hauling of all the materials would amount to $20,000, there would then be presented a case absolutely within the provision of the statute. Now, suppose that subsequent to this contract, the Executive enters into others, which, in the aggregate, amount to more than the sum appropriated, what effect could be produced upon the first contract? Could a contract, legal in its formation, become illegal by matter subsequent, and by acts over which the complaining party has no control? If the contract was legal, the right to do all the hauling was as operative as the right to be paid the specified rates, and equally as binding on the government.

It amounts to this, that if a contract be entered into under an appropriation justifying it, which the government desired to put an end to, all it has to do is to enter into other contracts which should exhaust the fund. In other words, it denies the power of the government to contract, that is, to bind itself.

But let us admit that though the contract was legally entered into, its duration was to be limited to the expiration of the then existing appropriation. This was an event uncertain as to time, dependent wholly upon the action of the government, and the knowledge of the happening of which was confined to the government. The contract under this admission could only be terminated by a notification to the party of the happening of the contingency. If the executive officer

has failed in a duty imposed upon him by the law, the government, whose agent he is, and not the innocent citizen must suffer the loss incurred.

The present case presents this remarkable feature, that the government has, by its intercourse with the claimant, recognized his contract from the time of its execution to April, 1855. On the 15th of March, 1851, they offered to pay the complainant $7,500 "for cancelling the contract," and during the whole period he has been discharging his duties under it. In April, 1855, he is informed that his contract had expired six years before!

My own view of the act of 1820, is this, that where the legislative will is to be ascertained alone from the fact of an appropriation, that the law is *directory* to the secretary, but if, in violation of this direction, he enters into several contracts which in the aggregate exceed the sum appropriated, each being less than that sum, such violation would not affect the validity of the contract, and for this reason: the law never operates as a snare to entrap the innocent. When a secretary offers to contract with a citizen under such circumstances, all that he knows is that a certain amount is appropriated—that it is adequate to the fulfillment of his contract. He has no means and no right to inquire into the condition of that fund on the books of the department, either as to what has been or will be expended, or as to what other contracts chargeable upon it have been or will be entered into; having no right to this knowledge, his interests cannot be made subject to the operation of such transactions.

As to the power of the Executive to enter into contracts, Judge Marshall says: "Without entering into the inquiry respecting the limits which may circumscribe the capacity of the United States to contract, I venture to say it is co-extensive with the duties and powers of government; every contract which subserves to the performance of a duty may be rightfully made. The Constitution which has vested the whole legislative power of the Union in Congress, has declared that the President 'shall take care that the laws be faithfully executed.' The manner in which a law shall be executed does not always form a part of it. A power not limited or regulated by the words of an act, has been given by the legislature to the Executive to construct fortifications, and large sums have been appropriated for that purpose. It is not and cannot be denied that these laws might have been carried into execution by contract, yet there is no act of Congress expressly authorizing the Executive to make any contract in the case." It follows as a necessary consequence that the duty, and of course the right, to make contracts may flow from an act of Congress which does not in terms prescribe the duty.—(U. S. *vs.* Maurice, 2 Brock, 110; U. S. *vs.* Linn, 15 Peters, 311.)

The contract under consideration is subject to two limitations alone. 1st. That it should be approved by the Secretary of the Treasury. 2d. That "the payments to be made shall depend only on the appropriations made by Congress from time to time for the completion of the custom-house."

As to the first, the petition states expressly that the contract was approved by the Secretary of the Treasury, and for the purpose of this

argument the statement must be regarded as conclusive, the case standing on a demurrer. If it was necessary to look into the evidence, we should find that the Secretary of the Treasury, under date of February 17, 1849, writes to the commissioners authorizing them "to inform Mr. Dennis Cronan that his contract for hauling materials, made with the commissioners, and forwarded here by them under date of November 17, last, is approved by the department."

And again the Secretary writes on the 15th March, 1851, to the commissioners, approving of an agreement made by them with Cronan "for cancelling his contract." This was two years after the contract, as it is now said, had expired.

As to the second limitation, it will be seen, it fully saves the power of Congress over its own appropriations. By the contract no hauling was to be done, except when required by Congress, and no money was to be paid, except when Congress appropriated for the purpose.

The whole question would, therefore, seem to be whether the Secretary was authorized to enter into a contract of any kind, or for any purpose, to endure longer than the existing appropriation. So far as I have been able to learn the practice of the government, the authority has not heretofore been disputed. In reference to this custom-house, there are similar contracts: on the the 4th of December, 1848, a contract was entered into with Luther Mun "for all the granite that may be required to complete the custom-house," and this contract, as I understand, is still operative.

I repeat, therefore, with confidence, that if it should be decided that this contract was so influenced by the act of 1820, as to be limited by the exhaustion of the then existing appropriation, yet, as between the government and the contractor, the contract was operative until he was notified of the fact. It is upon this principle that no suit can be brought against a tenant whose tenancy depends upon the will of the landlord, until he had been notified to quit.

Again, supposing the contract did expire with the appropriation of 1849, yet it was competent for the Secretary to have renewed it; and the continued recognition of the contract by the government until April last, was a tacit renewal from time to time, and operated to bind both parties as strongly as if express renewals had been written on the contract itself. So if a tenant holds over with the tacit consent of the landlord, he is considered as holding under a new lease for same rent, payable at same time, the law implies an agreement on the part of the landlord to let, and on the part of the tenant that he will hold on the terms of the expired lease.—(Diller *vs.* Roberts, 13 Serg. & Rawle, 60; Bacon *vs.* Brown, 9 Conn, 334; Dorwill *vs.* Stevens, 4 McCord, 59.)

Upon this branch of the case we, therefore, contend that these various appropriations and conditions constituted a law authorizing the Executive to construct the custom-house, and that he was fully authorized to enter into all incidental contracts necessary for giving effect to the legislative will.

2. That the contract in question being made under authority of law, did not depend for its duration upon any particular appropriation.

3. That if the exhaustion of the particular appropriation had any

effect upon the contract, it could only so operate after notice given to the contractor.

4. That by the constant recognition of the contract by the government, in demanding the services of the claimant under it, the contract will be considered to have been renewed by operation of law, even supposing it had expired, as is now contended for.

The only other question presented is, whether by the terms of the contract this party was entitled to do "all the hauling." The contract speaks for itself. It needs no argument to show the difference between a part and the whole, or that the profits of an undertaking may depend solely upon the monopoly stipulated for. On this subject I refer to the able opinion of the court of Louisiana, in the case of Cronan *vs.* Peters, herewith submitted.

P. PHILLIPS,
Solicitor for Petitioner.

IN THE COURT OF CLAIMS.

ON THE PETITION OF DENNIS CRONAN.

Brief of the United States Solicitor.

This is a speculative claim for $12,483 99, founded on a contract, by the commissioners for building the custom-house at New Orleans, with petitioner, for hauling the materials to be used in the building. The allegation is, that this contract was violated by employing other persons to do the hauling for which claimant had contracted, and he was not permitted to do the work or receive the pay.

The claim asserted is placed simply on the ground of *legal right.* There is no allegation or proof of any real loss or injury to the party; but that, being entitled under a contract to certain pay for doing certain work, he holds the government to pay, although he did not perform the work, because, under a misapprehension of his rights, the commissioner employed others to do the work. It is a claim, therefore, for the bond, not for services or losses, except the loss of profits on services not performed. It is a case, therefore, as presented both in the petition and proof, depending entirely upon the contract and the law applicable to such contracts.

1st. I contend that the contract was illegal when made.

The sixth section of the act of 1st May, 1820, entitled "An act in addition to the several acts for the establishment and regulation of the Treasury, War, and Navy Departments," 3d vol. U S. Statutes, p. 568, provides that no contract shall hereafter be made by the Secretary of State, or of the Treasury, or of the Department of War, or of the Navy, except under a law authorizing the same, or under an appropriation *adequate to its fulfillment.*

The only acts on the subject of this custom-house, and from which alone any authority could be derived to contract in relation to its construction, are contained in the appropriation acts of 1845, '47, and '48, U. S. Stat., vols. V, p. 761; IX, p. 165, ib. 296; appropriating, re-

spectively, $500, $100,000, and $130,785. The *first to pay for plans*, &c.; the second "for the *construction* of a custom-house;" and the third for *continuing* the construction, &c.

It was under this last that the contract in question was made, in November, 1848. But the hauling complained of took place between May, 1849, and April 1856, long after the last appropriation was exhausted under which it was made.

The language of the law is express, that no contract shall be made, except under a law authorizing the same, or under an appropriation adequate to its fulfillment. There was neither. The contract was *for all the hauling* required for the custom-house. It is not pretended that the appropriations made at the time were adequate to its fulfillment. But, by the terms of this contract, it depended "upon the appropriations made by Congress from time to time for the completion of the custom-house," and it is distinctly admitted in the claimant's brief, that it was in contemplation of future appropriations; and the contractor and the commissioners looked not to *the existing appropriation*, as the law expressly requires, but to future appropriations, for the fulfillment of it.—(See Brief of claimant's counsel, p. 3.)

This is in the face of the very terms of the law requiring no contract to be made unless under an appropriation adequate to its fulfillment, which, if it means anything, prohibits contracts to be made on the faith of future appropriations. Cases are referred to in the argument to show that this salutary rule is violated. But if that were true, I should be sorry that this Court should sanction so palpable an annulment of a law of Congress. But there is no proof of the habitual violation of this law; and the opinion of Mr. Attorney General Clifford, vol. iv, p. 600, giving the precise construction here contended for to the statute, shows also that it was not then (1847) the habit to violate it. He cites also various acts of Congress, and others might be added, if necessary, to show that Congress is in the habit of authorizing contracts to extend beyond the time of the appropriation made, where it is judged expedient. And this appears also to have continued to be the case in Mr. Toucey's time.—(See his opinion, vol v, p. 30, in case of the Bensons, September 8, 1848.)

Abuses.

The abuses to grow out of such liberty to contract are obvious. The present case illustrates the system. Here is a claim for $12,000, which is a perquisite of such a contract. The hauling of the one and a half millions of brick, for which pay is claimed, having been done altogether by another party, who in turn, at ten per cent. less rates, had, according to the evidence, a profit over all expenses of six thousand dollars.

On the principles here contended for, what is to prevent Captain Meigs from contracting for all the labor to be done on the aqueduct, or the Secretary of War from contracting for the Pacific railroad? For both appropriations have been made. A contract for either of these undertakings, with a margin, as in this case, for 100 per cent. profit, would be a valuable property. We have had public officers none too scrupu-

lous to make even such contracts as we see in this case, and we may have the like again. If the government can be held on such contracts, it must submit to be plundered even when the administration shall be changed into better hands. That is not the theory of our system, which is one of limited powers in all officers. Where there are periodical changes of officers provided for in order to secure responsibility, if the successors can be tied by contracts made by their predecessors, this is of no use. It is not denied that there are disadvantages in this. Public business and public interests may suffer from the want of power in public officers to take care of them in the best mode. It could not be questioned, for example, that there might be advantages attending the power to contract for all the work which might be required. But Congress, on consideration, has thought the abuses likely to grow out of the possession of such power greater than the advantages, and has deliberately preferred to run the risk of the inconveniences and disadvantages attending the withholding of such power, than to commit it generally to the executive departments. In my judgment, there is not a wiser statute in the ten volumes than this.

2. It has not been legalized.

But it is insisted that the recognition of this contract, under subsequent appropriations, continued it in force. To the extent it was recognized, I admit its obligation ; but the contest here is, to carry it beyond that limit. The proof of recognition consists in the subsequent employment of Cronan to do some of the work ; but so far as he was employed he has been paid. The complaint is, that he was not employed to haul Blanc's brick, and that the department and commissioners refused to recognize the contract as applicable to those materials. A contract could scarcely be implied, when there was an express refusal to recognize it. The correspondence of the Secretary of the Treasury, produced to show that an effort was made to get rid of Blanc's contract for the purpose of enforcing that with Cronan, is of no significance as respects this question. He writes under the effect of the opinion of the supreme court of Louisiana, in which there are *obiter dictum*, declaring a liability to exist on the part of the government to the claimant ; and he is desirous, as an honest executive officer, to save money to the government, and therefore endeavors to get Blanc's contract modified so as to avoid this claim. If there had been a direct acknowledgment of liability, instead of merely an effort to avoid the danger of it, that would have created no such liability. (1 Parsons, 363.)

Nor is the opinion expressed by the Louisiana court as to the liability of the government of any weight, seeing that it is founded on reasoning having no application to the relation of the parties, as the law which forms part of the contract was not adverted to in the opinion, and was not probably known to exist. The opinion proceeds altogether on the assumption that there was no limitation on the power of the commissioners to contract, with the sanction of the Secretary of the Treasury.

As to the ground taken, that the law is merely directory, and does not avoid the contract, because citizens could not know what amount is applicable to the payment, the argument is certainly not applicable

to this case, because the contract on its face admits that the money is to come from future appropriations. It cannot apply to any case, however, because the citizen can always ascertain, by applying to the proper officer, whether there is money in the treasury to pay for the service when rendered. In general, it would be safe to contract with any officer who professed to contract for payment to be made out of any existing appropriation; and if a party was *imposed on*, under such circumstances, it would be equitable ground of relief.

Measure of damages.

As to the general principle which should regulate the assessment, I shall not controvert the authority of the supreme court of Louisiana, quoted by the counsel for the claimant, in the case of Cronan *vs.* Peters, 9 La. Ann. Reports, in which the court say, if the government was a party to the record, the rule of damages is furnished by the 1,928th article of the civil code, viz: "the amount of the loss the plaintiff has sustained, and the profit of which he has been deprived."

That this does not justify the claim made by the claimant's counsel appears from the same opinion, where the court say: "It was one of those obligations which from its nature resolves itself into a claim for damages, on the execution of the contract by either party; and the prices which the plaintiff would have been entitled to charge if he had done the hauling *would not be a standard* by which these damages could be estimated, without other proof in connexion showing either *actual loss or a privation of gain*. But the defendant is charged with a violation of his duty as as a public officer, from which loss, it is said, resulted to the plaintiff, and that he has rendered himself liable for damages as for a loss, and that, in such a case, proof of the specific damages is not requisite."

It is plain from this, that under the civil code of Louisiana, which is a copy of the French code, (see Sedgwick, p. 67,) there should be proof of specific loss, in order that a recovery should be had for anything more than nominal damages. The case in 2 Denio, Costigan *vs.* Mohawk R. R. Co., p. 515, is therefore wholly inapplicable.

The claimant must, then, show "specific damages" or loss. That does not exclude a consideration of the profit he would have made; but the measure of the loss, including such profits, is not the difference between what two or three witnesses can be got to say was, in *their opinion, the cost* of doing such hauling, but the difference between the *price agreed upon and the ordinary or market price for the service.* This would pay the profits on the contract, and so fully indemnify the claimant. This is the universal rule of arriving at the loss where there is a market price.—(Sedgwick, p. 85.) As to the rule where there is no market price, see opinion of Nelson, C. J., quoted in Sedgwick, p. 84. "If there was a market value of the article in this case," said the judge, "the question would be a simple one; as there is none, however, the parties will be obliged to go into an inquiry as to the actual cost of furnishing the article at the place of delivery, and the court and jury should see that, in estimating this amount, it

be made on a *substantial basis,* and not left to rest *on the loose and speculative opinions of witnesses.*" It is not pretended that there is no market price for transportation in New Orleans. So far from it, at one period in the history of this case the claimant contended strenuously that his contract was not above the market price, and he proves now that it corresponds with the tariff of prices adopted by the city government of New Orleans.

Is there any reason for adopting a different standard of indemnity for the claimant than that allowed to the government? If claimant had been in default, the measure of damages fixed by the contract, and by the law independent of the contract, (see Ogden *vs.* Marshall, 4 Selden, 340,) would be the difference, if any, paid by the government. This allows nothing for the trouble, delay, or risk attending the procurement of other transportation; nor would the absolute inability to procure it on any terms impair the consequential loss on the contractor, (Sedgwick, p. 305.) Why should the government, on the other hand, be held to pay him more than the difference between the contract price and the ordinary rates which, it is fair to presume, he could have got from others? It is assumed that the current prices could be commanded by those offering merchandize in the market, and it is equally fair to assume the same thing of those offering transportation; a different rule will encourage litigation—it would take the whole time of one party to watch the other, to see if he had not opportunity to be employed. This case is different from both classes of cases referred to and relied on by the claimant: the first, where, by a charter-party, a certain amount of freight was stipulated for on a voyage *actually made*; and the other, where the whole time of a person was engaged.

The case at bar, however, was in fact a contract to do part of the work required in building a house, and does not differ in its incidents from such contracts generally. Could a mechanic recover the price of a house because he was prevented from building it? or half the price by merely proving that ordinarily the profits of carpenters were 100 per cent.? If there were a market price for the character of building in question, the rule would require that that should be shown; and in the absence of it, the quantity of labor and materials entering into it would be required to be shown, and the prices.

But whatever we might suppose just or otherwise is immaterial, as it is settled by the supreme court of Louisiana that the rule in this case is not *the price stipulated in the contract,* but it is the loss which he has sustained—and this includes the profit lost; and the claimant must make specific proof of actual loss. This ignores at once the case here presented, where there is no proof of *actual loss,* according to the rules for making such proof. If the proof is good here, it was good in the supreme court of Louisiana, where it was shown that the party was refused the employment, and the stipulated price was shown. Now, if it was to be presumed that the loss was the price, and that the defendant must show that the other party could have been employed, and therefore suffered no actual loss, the proof was then complete. But the court said no—they must have proof of actual loss, a loss of gain. This shows that there is no analogy in this to the case

of the charterer, or Costigan *vs.* R. R. Company, where the proof was complete on showing the price; but the actual loss must be shown *affirmatively*, and there is none shown.

In entire accordance with this is the case in supreme court of New York, cited in Sedgwick, p. 232, first edition, where the author says: "On a contract to transport horses in a canal boat, the plaintiffs averred readiness to perform on their part, and a neglect and refusal on the part of defendants to furnish the freight, and claimed to recover the entire sum specified in the agreement. But the supreme court of New York held, that they were only entitled to recover what they had actually lost by the defendant's non-performance, saying, 'suppose the plaintiff had, the next hour, been furnished with freight entirely adequate to the voyage, at the same sum, they would have been entitled to the damage arising from the detention for that time, but no more. A tender and offer to perform is equivalent to performance, *but merely for the purpose of sustaining an action.* It is not performance, though in one respect it resembles it consequentially. It is *quasi* performance, but it does not regulate the amount of damages.'"

Considerable pains is taken to prove that the claimant was put to extraordinary expense to get the proper wagons, &c., for the work to be done under his contract. To haul the granite, he had to get enormous wheels and a great many of them; that such were notto be had in New Orleans, &c.; great expense in consequence, &c., &c. So much is said in the testimony about the procuring of large wheels, and expense connected with the preparations to haul huge masses of granite—the like of which was never seen before—that I prepared my nerves for a corresponding catastrophe, in the loss of all use of these expensive machines, by the refusal of the commissioners to permit him to haul a single block of granite. Imagine my surprise when I discovered that he had hauled all of it.

This expense, then, forms no item of loss, and it must be assumed that the contract was beneficial, so far as he executed it, because, if not, the refusal of the United States to permit him to execute the other part enabled him to throw it all up.

M. BLAIR.

IN THE COURT OF CLAIMS.

DENNIS CRONAN *vs.* UNITED STATES.

Argument on trial docket.

The decision of the Court, ordering testimony to be taken when this case was argued on the law docket, was according to the practice of the Court at that time, a decision in favor of the claimant on the face of his petition.

On that argument the validity, not the construction, of the contract was assailed by the Solicitor. My attention was therefore not directed to any other point, and the construction of the contract in my printed argument is treated but in a single sentence: "by the terms of the

contract the party was entitled to do all the hauling." The contract speaks for itself. It needs no argument to show the difference between a part and the whole, or that the profits of an undertaking may depend solely upon the monopoly stipulated for. On this question I refer to the able opinion of the supreme court of Louisiana, in the case of Cronan *vs.* Peters.

For my views on the validity of the contract under the act of 1820, I refer to my former printed argument. But on the new objection, touching the construction of the contract and the measure of damages for its breach, I submit the following suggestions:

It is not denied that by the express terms of the contract, Cronan was "to do all the hauling," or the "hauling of all the materials;" but it is alleged that this did not preclude the commissioners from purchasing materials and contracting at the same time for their delivery at the custom-house.

It is very evident that if materials were thus delivered, then Cronan would not do "all the hauling" contracted for by him, and to this extent an exception would be written into the contract not now found in it.

This interpolation is sought to be sustained on the consideration that it could not be presumed that the commissioner would prohibit the government by contract from entering into arrangements which might be necessary for the supply of materials.

It might be sufficient to answer, that as this necessity was not provided for in the contract, it could not now be set up to justify a violation of the plain words of the contract.

But not to make the argument broader than the exigency of the case, we will confine it to the facts as presented by the evidence.

In 1852, the commissioner proposed to purchase a large quantity of brick from the son-in-law of one of their board. His offer was to sell the brick deliverable at the new basin, the usual place of depot, at $18 50 per 1,000, or deliverable at the custom-house at $20 per 1,000. In other words, to sell them as they were usually sold at $18 50, and to haul them to the custom-house for $1 50 per 1,000 additional.

Now as the commissioners had the option of purchasing without the hauling at the usual market price of bricks, it cannot be said that there was any necessity to employ the vendor to haul them.

That there was no such necessity, is not only shown by the very party who received the benefit of the violation of Cronan's contract, but by several other witnesses who testify that there was no difficulty in the government purchasing as many bricks as they wanted at fair market value, without yielding to the vendor the contract for hauling; and this evidence is not questioned or in any manner disputed.

If no necessity existed in the purchase of materials, then the including of the hauling in such contract of purchase was a matter depending upon the option of the commissioners.

Cronan's contract, therefore, instead of giving him absolute monopoly of the hauling, would read thus: "the said Cronan shall be entitled to do all the hauling of the materials for the erection of the custom-house, provided that the said commissioners at their option may so contract on the purchase of materials as to give the hauling of

said materials to the parties from whom said purchases may be made." In other words, the whole stipulation would thus be converted from an absolute right to do all the hauling, into a right to do so much as the commissioners might choose to permit.

The evidence shows that the profits on the hauling varied as to the character of the materials; on some kinds there was no profit, on others but little, and others the profits were large. To place it in the power of the commissioners to select the class of materials which he should haul, would enable them to convert a profitable contract into an engine of ruin. Yet to this absurd conclusion the argument necessarily leads.

Supposing that the terms of the contract were doubtful, (which they are not,) even then the Court would not seek to find the interpretation which would shield the government, but would look for the intention of both parties to the contract, and enforce it as they both must have understood it. That Cronan never could have intended to bind himself with sureties to such a contract, requiring investment in machinery of from five to seven thousand dollars, need not be argued.

It is said, in opposition to this claim, "that claimant was to do all the hauling of the materials for the custom-house which the commissioners should have to do. If the commissioners should have building materials at any place at a distance from the site of the custom-house, they were bound by the contract to call on the claimant to haul them, and to pay him for the hauling at the rates agreed on. But the contract did not prohibit the commissioners from purchasing any materials at a certain price deliverable at the site of the building, because they would not, in such case, have those materials at any place from which it would be requisite to hire them to be hauled to the site. Such materials would not belong to the commissioners until they were delivered at the site, and in such case the commissioners would not have the hauling to do."

This is the form of the objection as presented by one of the members of the Court. But I respectfully submit that it is rather a statement or conclusion than an argument, without the concluding sentence is relied on as the reason for the statement, to wit: that the materials did not belong to the commissioners until they were delivered at the custom-house, and therefore they had no hauling to do.

But this reason is outside of this case. The contract does not provide that Cronan was to do the hauling of the materials "belonging to the commissioners," or to execute such duty when the commissioners had "hauling to do," but the covenant was "to do all the hauling of the materials which may be deemed necessary for the erection of said custom-house." The question of ownership, which is made the pivot of this objection, is wholly foreign to the contract.

It is true the ownership of the bricks was not in the commissioners until they were delivered at the custom-house. But this is the very matter complained of. They could have owned them at the basin where such articles were usually delivered, but for the purpose of defeating Cronan's contract they voluntarily employed the vendor of the bricks to deliver them at the custom-house, agreeing to allow, in

addition to the price of the bricks, $1 50 per 1,000 for the hauling, which was to be included in the sum to be paid on delivery.

These repeated violations of the contract, whether arising from political or personal hostility to Cronan on the part of the commissioners, or to advance the pecuniary interests of the relations of the commissioners, led to a suit by Cronan in the courts of Louisiana. In this suit Cronan sought to recover damages for the breach of this contract, and set up the same matters of which he now complains. The defendants, the commissioners, denied their liability on the ground that they were the mere agents of the government. The case was decided in the district court, and subsequently on appeal in the supreme court of that State. The unanimous opinion of the judges is to be found reported in the case, (Cronan *vs.* Peters, 9 Louis., 468,) in which the court quotes a letter from the commissioners to the Secretary of the Treasury, June 30, 1852, in which they say "that in making the contract with Mr. Blanc for pressed brick, his proposition was for $18 50 per 1,000, deliverable at the basin, and $20 per 1,000 deliverable at the custom-house. That Cronan's price, according to the contract for hauling, was about $2 25 per 1,000, and that it was obviously the interest of the government to accept the latter price, deliverable at the building, and it was accepted; but that Cronan considered it an evasion of the contract with him, and with some apparent reason." The letter then expresses the desire to avoid any act that may have the semblance of an attempt to evade the contract; and that if, in the opinion of the Secretary, Mr. Blanc's proposition should have been accepted, there would be no difficulty in altering the contract with him.

The supreme court say: "As it is evident the hauling was given to others, not from necessity, but for the advantage of the government, in procuring it to be done at cheaper rates than they would have had to pay him, we think it was a clear violation of the contract for which the government is responsible in damages to the plaintiff."

As this contract was made in Louisiana, and was to be performed in that State, by the well settled rule its construction would be governed by the *lex loci contractus*. The construction given by the supreme court of a State to a State statute is as much a part of the statute as if it had been written in the body of it by the hand of the legislature itself. The same rule applies to a like construction of a contract made within a State. Story gives the rule thus: "The general rule is that, in the interpretation of contracts, the law and custom of the place of the contract is to govern."—(Conflict of Laws, § 272.) What that law and custom are in this case, we find in the decision quoted.

We have then the adjudication of the supreme court of Louisiana, expressly declaring the true construction of this contract, in a case where it had jurisdiction of the parties and the subject matter, and where the parties were virtually the same as in the case before us; and it would seem, on well settled principles, that it should be respected by this Court. Any other construction would permit

Cronan's contract to be violated, on the shameless plea that money could be saved by it.

The question remaining is, that of the measure of damages. The deposition of Mr. Wharton, the secretary to the board of commissioners, shows that there was paid for hauling materials to other persons the sum of $12,438 39, at the contract price.

By the terms of the agreement, Cronan was bound "to perform said hauling when thereunto required, without prejudice to the work on said building, and at all times and at such places as may be designated, &c., to haul and deliver said materials."

Under this agreement, by its express terms and conditions, the contractor was bound to be "*uncore prist.*" He was not at liberty to speculate upon what might be the requirements of the government, and to engage in work under other contracts, but to stand always ready with his force to do the work required by this contract. This is not like the case of a party who had been dismissed before the expiration of the period for which he had been employed, and who in good faith should not stand idle; but here the agreement was continuous and operative.

The rule of the civil law holds the debtor for the violation of a contract liable for "damages and interests," that is, he must indemnify the creditor from the loss he has occasioned to him, and for the gain of which he has deprived him.

1 Pothier, Ob., p. 90.

Civil Code Louisiana, § 1928.

Cronan *vs.* Peters, 9 Louis. An.

In the case last cited, the court say, "that the prices which the plaintiff would have been entitled to charge, if he had done the hauling, would not be a standard by which the damages could be estimated without other proof in connexion, showing either an actual loss or privation of gain."

In this case the nature of the contract and the proof all show that the damage was the whole contract price. The expense of the party in the employ of laborers and teams was the same, whether idle or employed. This expense and the profit in performing the work make up the contract price.

This rule is the same at the common law: "the remedy shall be commensurate to the injury sustained, and the party shall recover so much as will repair the injury sustained by the misconduct of the defendant."

Rockwell *vs.* Allen, 7 Man. 254.

Walker *vs.* Smith, 1 Wash. 152.

To show that the payment of the net profits would not indemnify Cronan for the damages he sustained, we will assume that his profits were one hundred per cent. That is of the $12,000, the cost would be $6,000, and the profit $6,000. Now as the evidence shows that the expenses were the same, whether he was idle or employed, to pay him the $6,000 profit would be merely to reimburse him for the outlay, and leave nothing for his services.

It is insisted that the government should not be bound for the whole of this amount, because while the party was idle by reason of

his non-employment, as complained of, he could have earned wages from others. But damages for violation of a contract are not mitigated by the courts on the mere presumption of the debtor. Whenever such mitigation takes place, it must be on proof that money was earned, or at the furthest, that work of a similar character was offered to the party under circumstances where good faith required him to accept of it, and he refused it.

Costigan *vs.* Mohawk R. R. Comp. 2 Denio, 615.

Some exception was taken to the depositions of the witnesses who testified as to the cost or expense of hauling the materials. These witnesses were persons well skilled and experienced in the business; in some instances they use the expression in their "opinions," in others they state the sum in an absolute manner. If it had been mere opinion, this would not have been objectionable, as it is not merely speculative, but the result of certain facts, and this result given by those well skilled and conversant with those facts. Thus, a witness was asked "what, in his opinion, was the difference in value between such a vessel as was stipulated for in the contract, and such an one as another witness had described?" Upon well settled and familiar rules of evidence this was held to be entirely competent.

Sikes *vs.* Paine, 10 Iredell, 281.

Beckwith *vs.* Sydebotham, 1 Camp. 117.

The third interrogatory to the witness Blanc, in the case before us, is as follows: "Are you sufficiently acquainted with the business of hauling material to enable you to state what the cost thereof would be to a contractor who is prepared to do such work, from 1849 to the present time? Answer. I think I am. It is part of my business. The cost of hauling brick, &c." George Cronan is asked: "What would be the net profit, as near as you can estimate, on hauling bricks at $1 80 per 1,000? Answer. As near as I can estimate, it would be 95 cents per 1,000."

These questions and answers are unobjectionable. If the answers are too general, it was the privilege of the Solicitor to test the accuracy of the statement by asking for the particular items. But the testimony cannot be excluded on the ground of illegality.

But independent of the depositions, among the certified correspondence furnished by the Treasury Department, it is stated in the letter from Commissioners Penn and Beauregard to the Secretary, under date of September, 1854—"what the loss would be, we cannot tell, but the profits, as near as can be estimated, would be from 80 cents to $1 15 per 1,000." This is evidence of the highest character, as coming from the government itself, and made by agents whose business it was to know the facts testified to.

From the statement herewith submitted, as made up from the evidence, the net profits amount to $7,414 94.

The action of the government on this contract will be seen from the following documents:

1st. Letter from Secretary Walker of February 17, 1849, approving the contract.

2d. Letter from commissioners to Secretary of March 3, 1851, enclosing agreement with Cronan for the purchase of his contract.

3d. Letter from the Secretary in reply, March 15, 1851, approving of the purchase at $7,500, and authorizing its payment.

4th. Same to same, March 19, 1851, revoking this authority on account of some difficulty in cancelling the original contract.

5th. Letter of Secretary Guthrie to commissioners, August 7, 1854, stating, "it is shown by the decision of the court in the case of Cronan *vs.* Peters, that he is entitled to the hauling of the materials for the work by the original contract, and the subsequent contract made with Blanc, so far as the hauling of the bricks is concerned, is in violation of that contract. Mr. Blanc's contract should therefore be modified so as to pay him $20 for his bricks, less the price to be paid to Cronan for the hauling."

6th. Letter from commissioners in reply, September 2, 1854, stating that Blanc's bid for bricks was $18 50, deliverable at the basin, and $20 deliverable at the custom-house. That the Secretary's letter had been communicated to him, and he had refused to make any modification in his contract.

7th. Letter from Blanc to commissioners, August 21, 1854, declining the modification and standing on his contract, as approved by the department.

From this it appears that—

1st. From 1849 to 1854, Cronan's contract was treated by the department as obligatory upon the government.

2d. That the department entered into a contract with Blanc, which violated the rights of Cronan under his previous contract.

3d. That they endeavored to extricate themselves from the dilemma by modifying the contract with Blanc.

4th. Having failed in this attempt when Cronan asserted his right to compensation for the breach of his contract, they for the first time set up the plea that Cronan's contract expired in 1849, and that, if still valid, there has been no breach of it.

Further comment is unnecessary.

P. PHILLIPS,
Solicitor for Claimant.

WASHINGTON, *December* 7, 1857.

IN THE COURT OF CLAIMS.

ON THE PETITION OF DENNIS CRONAN.

Brief of the United States Solicitor on the rehearing of this cause.

The petitioner claims $12,438 99 for the alleged breach of a contract dated November 17, 1848, entered into with him by William M. Gwin, D. Prieur, and Alice La Branche, as commissioners for the erection of a custom-house in the city of New Orleans.

By this contract Cronan stipulated "to do all the hauling of the building materials which may be necessary for the erection of said custom-house, at the same rates and agreeable with the tariff estab-

lished by the general council of the city of New Orleans, on the 5th June, 1843, in said cases." And the commissioners stipulated "to pay unto said party of the first part the same rates, &c., * * * as are established by the ordinance aforesaid." And it was expressly understood, "that the payments to be made said party of the first part shall depend only upon the appropriations made by Congress, from time to time, for the completion of said custom-house." The petitioner alleges that this contract has been violated "by entering into agreements with other parties for delivery of 'materials necessary to the building,' at the site of said custom-house; and among others a contract has been entered into with Jules A. Blanc, a son-in-law of said Peters, (who was one of the commissioners formerly,) for the delivery of one and a half million of bricks." He further alleges that he has kept up his establishment to do all the hauling, as well that which had been actually done by him as that which had been performed by Blanc and others, which he ought to have been called on to do, and therefore claims compensation as if he had actually done the hauling done by Blanc and others. The petitioner further states, "that on the presentation of his claims to the Secretary of the Treasury, on 28th April last, it was refused payment solely on the ground that the said contract was not legally binding upon the United States since the close of 1849, because at that time the existing appropriations for building the custom-house had been exhausted."

I. The first question is, whether the objection taken by Mr. Guthrie, Secretary of the Treasury, as stated in the petition, is valid. That objection was founded on section 6 of the act of May 1, 1820, (3 Stat., p. 568,) which provides that no contracts shall hereafter be made except under a law authorizing the same or adequate to its fulfillment.

It is not contended that there was any law expressly authorizing the commissioners to contract "for all the hauling," &c. All the authority contended for is that implied from the appropriation acts. Nor is it denied that the sums appropriated by the acts of 3d March, 1845 and 1847, (3 Stat., 761, 9 ib., 165,) and of August 12, 1848, (ib., 296.) had been exhausted before the demand which is here presented had accrued. But it is contended that the appropriation made *subsequent* to the making of the contract had legalized it, and imposed it as a binding obligation, to be fulfilled by the Executive for the time being. Such a construction defeats the whole object of the act of 1820, which was a remedial act, and ought, therefore, to be construed to advance the remedy.

It was not necessary to pass a law to render null any contract which the Executive should make without authority of law; but as such authority was given, both by appropriations and by express law, it became necessary to adopt the general provisions of the act of 1820, to limit expressly the extent of the authority to be implied by an appropriation, in order to prevent misconstruction or abuse. It is evident on the face of the act that it was designed to meet this precise case, and to prohibit contracts which "shall depend on appropriations" to be made, by admitting only such contracts as shall be made "*under* a law authorizing the same, or *under* an appropriation adequate to its fulfillment." It is not contended that the appropriation

acts, in force when this contract was made, were adequate to its fulfillment. On the contrary, it is admitted that all the money appropriated by them was expended before this claim accrued; and in the absence of any allegation or proof to the contrary, it will be assumed that these appropriations were properly exhausted—that is, that the money was applied to the specific purposes for which Congress intended it, so as to leave no part of it in the treasury which would be applicable to this claim. The contract itself also recognizes the fact that the appropriation existing at the time it was made was not looked to for its fulfillment, and stipulates that payments "shall depend only upon the appropriations made by Congress from *time to time for the completion of said custom-house*," and the claim now preferred is not put on the ground that the appropriations then made were adequate to its fulfillment, but rests entirely on the allegation that the appropriations *subsequently* made were adequate. The question then is, whether, when Congress prohibits all contracts except such as shall be made *under* a law authorizing them, or *under* an appropriation adequate to their fulfillment, a contract which confessedly was not made under any such law or appropriation then in existence, but in contemplation of future appropriations for its *completion* and fulfillment, is not prohibited by the very letter of the act? It certainly is, unless a thing can be said to be done under a law at a time when there is no such law in existence. The subsequent appropriations, made from time to time to complete the custom-house, do not establish contracts null when made and not referred to in the act. It would have been as competent to the commissioners, under an annual appropriation of $100,000 to be expended for the materials, labor, &c., required within the year, and adequate only to carrying on the work during one of the twelve years it was estimated it would require to complete the building, and wholly inadequate to its completion, to have made a contract for all the work of every description requisite to the completion of the building and requiring many millions of dollars to be expended in completing it, as to have made a contract for all the hauling or all of any work or materials which required and looked to other than existing appropriations to fulfill the contract. And if on the first appropriation a contract had been made with any one, giving him the privilege of furnishing all the required building material and labor at current rates, the payments to depend on appropriations to be made from time to time; in other words, to construct the building, and thus avowedly disregarding the law which limits the authority to contract to the extent of the existing appropriations, so much of the contract as was forbidden by law was absolutely null and void, and to all intents and purposes as if it had never been made, whether subsequent appropriations are made for carrying on the work or not. An appropriation is unquestionably, a present authority to contract to the extent of the funds it supplies, but it cannot be construed to sanction previous contracts which were made, not only without such authority, but in defiance of express law forbidding them.

II. But if the contract is deemed valid, the question arises whether it has been violated. The facts are stated in the opinion of the

supreme court of Lousiana, (9 Lousiana Annual Reports,) to whose attention they were brought by a suit, instituted in the second district court of New Orleans, by the claimant, against Samuel I. Peters, one of the commissioners. It there appears that the circumstances which gave rise to the claim were, that Kendall & Co., who were contractors to furnish a large number of brick, and by whose contract the brick were to be delivered to the commissioners on the levee, whence they were hauled to the building by Cronan. Kendall & Co. having failed, a new contract was entered into for brick with Jules A. Blanc, the son-in-law of Peters, who agreed to deliver them at the building. Cronan objected, and claimed that the contract was an evasion of his contract. It should have been made so as to allow him the hauling, although by making separate contracts for the article and the hauling of it, the cost to the government was enhanced, because, as he alleged, by the terms of his contract, he was to do all the hauling. The hauling of these brick, in which this controversy originated, according to the statement of the facts, in the opinion of the supreme court of Louisiana, amounted to only about $6,000, but it was perceived in the course of the controversy, that the principle on which the action to be finally had rested would include other items, which did not attract attention till the controversy was started by the default of Kendall & Co., and the change in the terms of the purchase of the bricks, which that default occasioned. The commissioners, on the other hand, contended that they were not bound to give Cronan any hauling but of materials, the delivery of which was usually contracted for separately from the price of the article itself, which was not the case with bricks in New Orleans; and therefore refused to give him the hauling, or to pay him for it, and the commissioner of customs and the Secretary of the Treasury, to whom the question was referred, concurred in their decision, on the ground that the contract did not apply to articles which did not belong to the United States till delivered at the custom-house; in other words, that the contract related only to the hauling required by the United States, and not to that required by other persons, and that there was nothing in the contract with Cronan which forbade the purchase of articles needed for the custom-house at the place where they were wanted, or required that these articles should be purchased a little way off from the building, for the purpose of making a job of hauling for Cronan. If this should be the correct construction of the contract, there has been no violation of it. It is contended that it is not the true construction, because the contract makes no exception, but gives all the hauling to the claimant.

But this language must receive the construction intended by the parties; and, therefore, although it says "*all the hauling*," it is not contended that Cronan was to haul the lumber or stone intended for the custom-house in Maine or Massachusetts, where it was obtained, or anywhere else than in New Orleans. He was not required, therefore, to do *all* the hauling of the materials used in the custom-house. The reference in the contract to the ordinance establishing the rates of charge, it is supposed, restricts the contract to hauling done in the city. But it seems to me not necessarily so. For if the United

States had owned materials for the building lying beyond the city limits, I do not think the commissioners would have been at liberty under their contract to have given the hauling to another person, merely because the contract did not provide specific rates of compensation, except for articles which were loaded and unloaded within the city limits. I think Cronan might have contended with reason that his contract gave him the right to do all the hauling which the commissioners required; and the fact that a specific price had not been fixed for all they required would no more deprive him of the right to do it, and of the right to be compensated for it at a reasonable rate, than the absence of any rate at all would have deprived him of a right to any compensation at all. It is not, therefore, the absence of specific rates of compensation for the hauling of any of the materials required for the custom-house at a distance which excluded that hauling from the contract.

It is the fact that the United States did not own the materials whilst they were in Maine, or until they were delivered by the contractors who furnished them pursuant to their contracts, which excluded such hauling from the contract; and, indeed, it could with no greater reason be supposed that such a contract applied to property which, though intended for the government, was not yet the property of the government, than it would to other property of private persons, whether intended for the government or not.

The time at which Cronan protested against being superseded in hauling bricks by the new contracts made in consequence of the default of Kendall & Co., does not appear. But it dces appear from the statement of facts in the decision of the district court, and also in that of the supreme court, in the case of Peters, that the exception of Cronan to the action of the commissioners originated from this circumstance, and was founded on the idea, which still appears in the petition, that Peters, one of commissioners, had contrived the contract with Blanc, his son-in-law, from unworthy motives, to evade the contract with him. It was on this assumption that Cronan brought a suit in New Orleans against the commissioners, but proceeded against Peters only, whose relationship to Blanc gave color to the charge. But it was shown on the trial that Peters had but a nominal agency in making the contract with Blanc, which was, in fact, made by Wood, the architect, without the knowledge of Peters, and it was not then contended, the court say, that he had acted from unworthy motives, and it was then attempted to fix a liability on him, merely because he was acting as the agent of the government, which could not be sued. This was manifestly not the original theory on which the suit was brought. If it had been, his associates in the commission would also have been proceeded against, and we should not have heard so much of Peters being the father-in-law of Blanc. That theory was abandoned after the suit was brought, and before the trial, because it could not be sustained by proof, and the principle was then resorted to, which is here set up, that the contract with Cronan forbade that with La Blanc, whether it was intended as an evasion or not, because Cronan's contract gave him the hauling of *all* the materials. This new theory would also prohibit the hauling of the lumber and other articles to

the custom-house by the owners, for the purpose of being sold there to the United States. And this claim was accordingly extended in account G, to include all articles purchased at the custom-house since May 15, 1849. If we apply to this state of facts Paley's rule, that "when the terms of a promise admit of more senses than one, the promise is to be performed in that sense in which the promiser apprehended at the time the promisee received it," the case is free from all difficulty. The facts show conclusively that it did not enter into Cronan's head, when the promise was given, that he could claim pay for the hauling of articles which did not belong to the United States, and that he did not complain of the deliveries of sand, lime, and lumber, &c., at the custom-house, made by the owners of those articles, concurrently with the delivery of the brick, the right to haul which he contested, because he regarded the contract by which he was deprived of it as an evasion of his contract, contrived by Peters, the father-in-law of the beneficiary. Having conceded in the district court his error as to this the original ground of his action, he cannot be permitted, on the principle propounded by Paley, to maintain his claim by a new and different interpretation of his contract from that in which he had set out, even if that contract admitted of such an interpretation.

As respects the construction given to this contract by the courts in Louisiana, it is admitted by those courts that they had no jurisdiction over the subject, and it follows that they could with equal propriety have given an opinion on any question between the government and any other person, as upon the construction of the contract with Cronan, to which they declare that Peters was no party, and therefore not liable, whether it was broken or not. It is not surprising that these courts should have construed a contract to the prejudice of a party not represented before them, because *les absents ont toujours tort*. But it is singular that they should have given any opinion respecting the construction of a contract, when they declare that no party to it was before them, and it was therefore immaterial for the purposes of that case whether it had been broken or not. To do this, they invert the ordinary and natural course of inquiry, according to which the question of the liability of a party on a contract precedes the question whether he had broken it, and to what extent. But here, questions of the breach and its extent, are considered preliminary to determining whether the defendant is responsible. The explanation is, probably, that this was the order in which the questions were presented to the court, and this was adopted with a view to the use since made of the opinion delivered at the Treasury Department.

M. BLAIR.

IN THE COURT OF CLAIMS.

CRONAN *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

This is a suit for damages for the alleged breach of a written contract, made on the 17th of November, 1848, between the claimant of

the first part, and certain commissioners on behalf of the United States of the second part. The contract relates to the hauling of materials for the erection of a custom-house in the city of New Orleans; which contract, so far as it is necessary to state it is as follows:

"That whereas, in compliance with the acceptance, on the part of said parties of the second part, of the proposal made by said party of the first part, of the 30th October, 1848, to do all the hauling of the materials necessary to the building of said custom-house, said party of the first [part] doth hereby covenant and bind himself to and with said party of the second part, to do all the hauling of the building materials which may be deemed necessary for the erection of said custom-house at the same rates," &c., "said party of the first part binding himself to do and perform said hauling when thereto required, without prejudice to the progress of the work in said building, and at all times and at such places as may be designated by the superintendent of said building, or by the architect thereof, to have and deliver said materials, and in case said party of the first part fail in any respect to do and perform said hauling when thereto required, and in the manner hereinafter stated, then said party of the second [part] shall have the right to go out and employ others to do said hauling." * * * "And said party of the first part doth hereby covenant and bind himself to and with said party of the second part, 1, to haul all the building materials including the granite, and to deliver the same when thereto required at such points as may be designated by the superintendent or architect of said building in good order and free from all injury from hauling or otherwise, the granite to be delivered free from breakage or being soiled in its transmission from the levee to the site of the building." * * * * * * * "The payments to be made said party of the first part shall depend only upon the appropriations made by Congress from time to time for the completion of said custom-house."

The contract is copied into the petition.

The breach alleged in the petition is as follows:

"That the commissioners have violated the said contract and injured your petitioner by entering into agreement with other parties for delivery of materials necessary to the building at the site of the said custom-house. Among others, a contract has been entered into with one Jules A. Blanc, a son-in-law of said Peters, for the delivery of one and a half million of bricks."

The petition charges that the claimant "is entitled to compensation, at the rates agreed on, for the hauling of all the materials thus delivered at the said building without his consent, and that his damage is to the full extent of such rates, amounting to about the sum of $12,438 99; that as he had to keep up his establishment of horses, mules, wagons, carts, wheels, and other machinery, together with the proper complement of men for the working and superintending them, the violation of the contract in this particular is a loss to him not only of an estimated profit, but the whole contract price of the hauling."

The evidence is to the following effect:

George Cronan, one of the witnesses, says that the commissioners

in making contracts with other persons for the furnishing of certain materials of the kind aforesaid, including in the price the expense of delivering such materials at the building, and thus refused the claimant the exercise of his right to haul them. The witness further says, that on preceiving that materials were hauled to the building under such circumstances, that is, by other persons than the claimant, he went to the custom-house on behalf of the claimant, and asked an explanation, also expressing the claimant's readiness to haul the materials, and was answered by the officers at the building that such contracts as he had alluded to had been made, and claimant's proposition to haul was therefore refused. The witness said he was unable to state the extent of the interruption with any precision, without reference to the books of the custom-house building; but that he knew, from an examination of those books, in company with Mr. Wharton, that it is stated fully on those books.

Another witness, Mr. Wharton, on being asked whether he had examined the commissioners' books for the purpose of ascertaining the materials hauled as aforesaid, answered that he had made such examination; that in December, 1852, under an order of the district court at New Orleans, he furnished a detailed statement of the facts from the commencement of the erection of the building to June 5, 1852; and that the paper marked G is a copy of that statement. The witness also stated that he had had made a further examination of the books, and found that subsequently to the 5th June, 1852, the hauling detailed in the paper marked G g was done by the persons therein named. He also stated that the claimant would have received, according to the rates specified in his contract, if he had done the hauling in question, the amounts stated in said document, and for the whole amount of hauling embraced in both documents, G and G g, the aggregate sum of $12,438 99, as shown at the close of the document G g.

The paper marked G, referred to by one of said witnesses, states certain quantities of various building materials as having been furnished to the custom-house by different persons from May 15, 1849, to June 5, 1852, which materials were not hauled by the present claimant. Of those materials, a large quantity of bricks appear to have been hauled by J. A. Blanc.

The paper marked G g gives a summary of the materials set out in paper G, and states, also, that 3,240,073 bricks were hauled to the custom-house by J. A. Blanc, from June 5, 1852, to April 15, 1856. The paper G g also states that, from September 1, 1852, to April 11, 1856, there were 25,278 feet of lumber hauled to the custom-house by persons other than the claimant; and that in November, 1852, some castings were hauled there, but by whom is not shown.

It appears, from copies of letters furnished by the Treasury Department, that a contract was entered into by the commissioners with Jules A. Blanc, and was approved by the department on the 25th September, 1852. By this contract Blanc was to furnish a large quantity of bricks, delivered at the custom-house, at $20 a thousand. The claimant claimed the right, under his contract, to haul those bricks to the custom-house. The Secretary's instructions on the sub-

ject to the commissioners were as follows: "As regards the contract of the bricks alluded to by you, with E. Blanc, (J. A. Blanc,) the department has already approved of it at the price delivered at the building, including the hauling; considering that no previous contract for hauling materials for the building can legally interfere with the right of the department to contract for the delivery of materials at the building."

On the 7th of August, 1856, (1854,) the Secretary wrote to the commissioners, saying: "It is shown by the decision of the court in the case of Cronan, that he is entitled to the hauling of materials for the work by the original contract, and the subsequent contract made with Blanc, so far as the hauling of the bricks is concerned, is in violation of that contract. Mr. Blanc's contract should, therefore, be modified so as to pay him $20 per thousand for his bricks, less the price to be paid Cronan for hauling."

In answer to the above, the commissioners, in their letter to the Secretary, of September 2, 1854, say that Blanc refused to modify his contract, and stated to them that his original bid for said pressed brick was $18 50, delivered *at the new basin*, or $20 *at the building*. This letter of the commissioners enclosed one to them from Blanc, in which he says: "By my contract, made with the commissioners of the new custom-house, and approved by the Hon. Secretary of the Treasury, I am bound, under 25,000 dollars' bond, to furnish the pressed bricks required for the groined arches of the new custom-house, and *to deliver them at the building*. In making the contract, my calculations were with that view. It is just as much part of my business to haul my bricks to the building as it is to make them, and for that purpose I am obliged to keep constantly a number of teams under a very heavy expense. Any change under my regular way of doing business will put me to very great inconvenience and loss. I therefore most respectfully decline making the modification in my contract suggested by the Hon. Secretary of the Treasury."

The present claimant, in 1853, sued one of said commissioners in a district court of New Orleans, on the contract now relied on, and failed. He appealed to the supreme court of Louisiana, and the judgment below was affirmed. Both of those courts considered the contract to be broken, but they decided that the commissioner was not individually liable. For the supreme court decision, see Cronan *vs.* Peters, 9 Louisiana Ann. Rep., 468.

The question necessary to be decided in this case is, whether the contract prevented the commissioners from contracting with persons other than the claimant for the purchase of materials for the custom-house to be delivered by the seller at the site of the building?

That question, in our opinion, must be decided in the negative.

We think that the proper construction of the contract is that the claimant was to do all the hauling of the materials for the custom-house which the commissioners should have to do. If the commissioners should have building materials situate at any place at a distance from the site of the custom-house, which they wished to have hauled to the site, they were bound by the contract to call on the claimant to haul them, and to pay him for the hauling at the rates

agreed on. But it appears to us that the contract did not prohibit the commissioners from purchasing any materials at a certain price, deliverable at the site of the building, because they would not, in such case, have those materials at any place from which it would be requisite to hire them to be hauled to the site. Such materials would not belong to the commissioners until they were delivered at the site; and, in such case, the commissioners would not have the hauling to do.

The fact particularly relied on in the petition as a breach, and which is proved, is that the commissioners contracted with one Jules A. Blanc for a large quantity of bricks to be delivered at the site of the custom-house at twenty dollars a thousand, and which were delivered accordingly by Mr. Blanc. If this was a breach of the contract, it is because the commissioners were obliged to receive, at some place distant from the site, all the bricks purchased for the building, and afterwards to hire the claimant to haul them to the site from the place where the seller had delivered them. We cannot believe, in the absence of precise language to that effect, that such is the meaning of the contract.

It is not proved, in this case, that the commissioners had any building materials for the custom-house at any particular place, which they wished to have hauled to the site of the building, and which they hired any other person than the claimant to haul; and the want of such proof is a fatal objection to the action.

The Solicitor objects to the contract on the ground that it was made without authority. This objection is founded on an act of Congress of 1820, which provides, among other things, that no contract shall be made by the Secretary of the Treasury, except under a law authorizing the same, or under an appropriation adequate to its fulfillment. (3 Stat. at Large, 568.) There certainly was not, when the contract in question was made, any law authorizing the Secretary to enter into a contract for the construction of the custom-house. Such authority is sometimes given. For example, in 1842 Congress authorized the Secretary of the Navy "to enter into contract with Robert L. Stevens for the construction of a war steamer."—(5 Stat. at Large, 472.) But no such authority was given in this case; and if the Solicitor's objection is not good, it is because there was, when the contract was made, an existing appropriation adequate for its fulfillment. But that point need not be examined, for the contract, supposing it, for argument's sake, to be valid, is not proved to have been broken, and the claimant, for that reason, is not, in the opinion of the Court, entitled to recover.

IN THE COURT OF CLAIMS.

DENNIS CRONAN *vs.* THE UNITED STATES.

GILCHRIST, C. J. My opinion in this case is as follows:

Before endeavoring to ascertain the meaning of the contract, it is proper to examine the question made in the argument as to its legality.

The sixth section of the act of May 1, 1820, (3 St., 569,) provides

"that no contract shall hereafter be made by the Secretary of State, or of the Treasury, or of the Department of War, or of the Navy, except under a law authorizing the same, or under an appropriation adequate to its fulfillment."

To make a contract legal, then, one of two conditions must be complied with.

1st, a law must authorize it; or,

2d, there must be an appropriation adequate to fulfill it.

On the 3d of March, 1845, the sum of $500 was appropriated "for plans and estimates for the erection of a custom-house in the city of New Orleans."—(5 St. 761.)

On the 3d of March, 1847, the sum of $100,000 was appropriated "for the construction of a custom-house in the city of New Orleans." —(9 St. 165.)

On the 12th of August, 1848, the sum of $130,785 was appropriated "for continuing the construction of the custom-house in New Orleans." —(9 St. 296.)

On the 3d of March, 1849, the sum of $150,000 was appropriated "for continuing the construction of the custom-house."—(9 St. 364.)

On the 15th of May, 1850, $150,000 was appropriated "for continuing the construction of the custom-house."—(9 St. 589.)

On the 3d of March, 1851, the sum of $250,000 was appropriated, (9 St. 609,) and on the 31st of August, 1852, the sum of $150,000 was appropriated for the same purpose. Thus, between March 3, 1845, and August 31, 1852, the sum of $881,285 was appropriated and expended in the erection of a custom-house. It cannot, then, be said that there was no law authorizing its construction, and if these facts do not show that it was so authorized, it would be difficult to conceive of any form of language in which the will of Congress ought to have been expressed.

Was it, then, competent for the Secretary of the Treasury, or for the commissioners appointed by him, to make a contract with Cronan to haul the materials necessary for the erection of the custom-house? Upon this power we have the opinion of Chief Justice Marshall in the case of the United States *vs.* Maurice, (2 Brock., 110,) "Without entering," he says, "into the inquiry respecting the limits which may circumscribe the capacity of the United States to contract, I venture to say it is co-extensive with the duties and powers of government; every contract which subserves to the performance of a duty may be rightfully made. The Constitution, which has vested the whole legislative power of the Union in Congress, has declared that the President shall 'take care that the laws be faithfully executed.' The manner in which a law shall be executed does not always form a part of it. A power not limited or regulated by the words of an act has been given by the legislature to the Executive to construct fortifications, and large sums have been appropriated for that purpose. It is not, and cannot be denied that these laws might have been carried into execution by contract, yet there is no act of Congress expressly authorizing the Executive to make any contract in the case."

These views are undenialy correct, and the power to make the

contract in question is the necessary result of the existence of the laws authorizing the erection of the custom-house.

But there is a provision in the contract "that the payments to be made shall depend only on the appropriations made by Congress from time to time for the completion of the custom-house." It must be considered that here was a constantly continuing recognition by Congress, by making appropriations, of all such contracts as subserved to the erection of the custom-house. It does not appear in point of fact that there were not, during all the time in which these materials were hauled, appropriations amply sufficient to pay for the hauling. It is not said that there was not money enough to pay Blanc and the other contractors, and if there were enough for them, there was enough for Cronan. It surely will not be seriously said that every contract for the construction of a great public work expires at once with the exhaustion of an annual appropriation, so that it cannot be renewed by a new appropriation, when the very object of the contract and the appropriation alike is to insure the construction of the work. While it was the evident intention of Congress that a custom-house should be built, and when appropriations were made for the purpose as they were needed, it will hardly be contended that the commissioners and the Secretary of the Treasury were acting in defiance of the law of 1820. The object of that act was to prohibit the Secretaries from making contracts without law or without an appropriation. When Congress had appropriated $10,000 for a particular purpose, it was not intended that the Secretaries should have the power of making a contract binding the government to pay $100,000 where the sum appropriated was insufficient for the purpose. But when Congress were constantly making appropriations, the law never intended that a contract should be illegal where the payments to the contractor by the terms of the contract were made to depend upon the appropriations.

There seems, therefore, to be no sufficient reason for declaring the contract illegal.

The material question is as to the construction of the contract.

It appears from the contract—

1. That the claimant had proposed to do *all the hauling* of the materials necessary to the building of the custom-house.

2. That he bound himself to *do all the hauling of the building materials* which might be deemed necessary for the erection of the custom-house, and to do and perform said hauling when *thereto required*, and in case he should "fail in any respect to do and perform said hauling when thereto required," then the United States should "have the right to go out and employ others to do said hauling," and the claimant, by such failure or neglect, should forfeit to the United States the difference in price which they may have paid by reason of such default, and should forfeit and be responsible for such damages as might have been incurred in the progress of the work by reason of his default. He then binds himself "to haul all the building materials, including the granite, and to deliver the same when thereto required," and to furnish a bond with sufficient sureties conditioned to comply in all respects with the stipulations of the contract.

The United States covenant to pay him "for hauling said building materials" at certain rates stated in the contract.

Now, it is very clear that it was important for the commissioners that there should be some person on whom they could rely to haul the materials for the custom-house. This was the sole and specific purpose for which the contract was made. It was not prudent for them to rely on such persons as accident might throw in their way when services of this kind were required. And it was an object with Cronan to engage to haul all the materials, provided he could be sure of having all the hauling to do. But it certainly could have been no object with him to enter into a contract to do all the hauling, and to give security for its performance, and then to leave it entirely to the convenience or caprice or interest of the commissioners, whether he should or should not be employed to do all the hauling. He could not have intended to leave it in the power of the commissioners to select such materials as it might be the most expensive to haul, and to deprive him of the privilege of hauling those materials which might be to him a source of profit. It cannot be supposed that a person who was willing to make a contract containing such stipulations as the present would have been willing to insert in it a clause leaving it to the discretion of the commissioners to determine how much of the materials he should have the privilege of hauling. And yet such is the substantial effect of the construction contended for by the United States. This construction would bind him, but would leave the other party free. The rule laid down in Paley's Moral Philosophy is as good in law as in ethics. "Where the terms of the promise admit of more senses than one, the promise is to be performed in that sense in which the promiser apprehended at the time the promisee received it." This rule was applied by Mr. Justice Bronson, in the case of Potter *vs.* The Ontario Company, 5 Hill, 147. Now did the commissioners apprehend at the time they made their promise, that Cronan received it in a sense which would authorize them, either directly to refuse to employ him to do all the hauling, or to make such contracts with other persons in regard to the materials as would enable them to dispense with his services in doing the whole or any part of the hauling? Is it not the most natural and rational construction of the contract that the parties meant that Cronan should have the privilege of doing all which he had bound himself to do, and that the language of the contract meant precisely what on its face that language purported to mean? That meaning is, that Cronan should have the privilege of doing all the hauling of the materials necessary for the erection of the custom-house when thereto required. Its meaning is not to leave it discretionary with the commissioners to require him to haul the materials or not as they should please, but it is incumbent on them to employ him for this purpose whenever it is necessary that building materials should be hauled. And they could no more set up any act of their own as an excuse for omitting to employ him than they could have directly refused so to do without the transparent pretext furnished by their own act.

It does not appear that the commissioners, with whom the contract was made, showed any disposition to evade the performance of the

contract. But they were subsequently removed and others were appointed, for what reason does not appear. By this second board a contract was made with Jules A. Blanc, a son-in-law of Mr. Peters, a member of the board, for the delivery of a large quantity of bricks at the custom-house for $20 per thousand.

On the 3d of March, 1851, the second board wrote to the Secretary of the Treasury, informing him that they had "entered into an arrangement with Dennis Cronan for the purchase of his contract for hauling all the materials required for this building for the government of the United States at $7,500," stating the reasons therefor, and asking for the Secretary's approval. On the 15th of March, Mr. Hodge, the acting secretary, wrote to the commissioners approving of the purchase. On the 19th of March Mr. Hodge wrote them again, saying that some difficulty having occurred as to the cancelling the contract with Cronan, he revoked the authority he had previously given for the purchase.

Cronan claimed the right of hauling the bricks to the custom-house which were purchased of Blanc. The Secretary's instructions to the commissioners on the subject were as follows: "As regards the contract for the bricks alluded to by you with Blanc, the department has already approved of it at the price delivered at the landing, including the hauling, considering that no previous contract for hauling materials for the building can legally interfere with the right of the department to contract for the delivery of materials at the building."

This statement of the law is, to say the least, made in tolerably broad terms. It assumes it to be a legal proposition that any contract the United States might make for hauling materials, however specific and free from doubt, might be lawfully abrogated and set aside, so far as it should interfere with a subsequent contract for the delivery of materials at the building. If this be true, then it follows that the United States may, consistently with the principles of law, make a contract with B contradictory of and inconsistent with their previous obligations to A, a result which would be repugnant to the most ordinary sentiments of justice.

It appears from the papers in the case that the claimant brought an action against the commissioners to recover damages for the alleged breach of his contract, in the second district court of New Orleans. We have been furnished with a copy of the "reasons for judgment" filed in the case on the 22d of January, 1853, from which the following extracts are made:

"This case, under the pleadings, presents three questions for solution: First, what were the plaintiff's rights under the contract? Second, to what extent (if at all) have those rights been violated? and, lastly, is the defendant responsible under the circumstances of the case for the damage incident to any such violation of the contract?

"The obligation of the plaintiff and his right under the contract was 'to do all the hauling of the building materials which may be deemed necessary for the erection of said custom-house.' In another part of the contract it is expressed as follows: 'To haul all the building materials, including the granite, and to deliver the same.' It is evident the contract was entered into with reference to the general

profit which might be derived from the execution of the entire contract, and is couched in terms so comprehensive and (as) to preclude any exception.

"I consider that the plaintiff has shown that he was ready to fulfill his part of the contract, and that he did substantially fulfill it so far as he was permitted to do so."

"Now, it is manifest that a contract which embraces various kinds of labor, which were more or less profitable, or perhaps not profitable, might, though entered into with prudence and forethought, be controverted (converted) into an absolute injury if the most profitable portions of the contract could be taken away at the caprice or even the convenience of one of the contracting parties. It is urged that, owing to the failure of other parties to fulfill their contracts with the government, it became necessary to make other contracts for materials deliverable at the custom-house building. The evidence has failed to satisfy my mind of the existence of any such necessity. Undoubtedly purchases were made from persons who refused to sell without including the hauling in their contract, but I am not satisfied that by an exercise of due diligence purchases could not have been made of the materials required without any stipulation concerning their transportation to the custom-house. Admitting, however, the fact as alleged, it would only show that circumstances had made it convenient or necessary for the government to violate its contract with the plaintiff."

It is very clear that there was not that necessity in the case which could excuse the government for the non-performance of the contract. If the performance of an act becomes impossible by the act of God, that is, by a cause which could not possibly be attributed to the promiser, and there is an impossibility of performance by the promiser, he will be excused, but mere hardship or difficulty is not enough to excuse him. Such is the principle recognized in Bullock *vs.* Dommitt, 6 T. R., 650, where it was held, in accordance with previous decisions, that a lessee of a house who covenants generally to repair, is bound to rebuild it, if it be burned by an accidental fire. So in Gilpins *vs.* Consequa, 1 Peters, C. C. R. 86, it was held, that it is no excuse for the non-performance of a contract to deliver "prime" "first chop" teas, that the season of the year when the teas were to be delivered was unfavorable to the best teas being in the market. In the leading case of Paradise *vs.* Jane, Aleyn 26, the law was thus stated: "When the law creates a duty or charge, and the party is disabled to perform it without any default in him, and hath no remedy over, then the law will excuse him. But when the party by his own contract creates a duty or charge upon himself, he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract."

Now, in the present case there was no inevitable necessity, nor is it pretended that there was any. The government could make a better bargain, as it turned out, by buying the bricks delivered at the custom-house than by buying them at the yard and employing Cronan to haul them. It certainly is a novel answer to give to a suit for damages for the breach of a contract, that the defendant ascertained

it would be more profitable for him to violate his contract than to keep it.

The question, therefore, was properly before the court upon the pleadings concerning the construction of the contract, and it was held that the true construction of it was as the claimant now contends. The question of damages was also considered, and their amount stated, but on the third question it was held that the defendant was not liable, as he was acting only in his capacity as an officer of the United States.

From this decision Cronan appealed to the supreme court of Louisiana. The case is reported in 9 Louis., 458. After stating the substance of the contract, the court proceeds as follows: "It appears that some time before the contract was entered into with the plaintiff, the government had made a contract, through the agency of the same commissioners, with Kendall & Co., to furnish the government a large quantity of bricks, and that on default of those contractors furnishing the bricks as required, it was stipulated the government should have the right to purchase bricks from any other persons, and hold the contractors responsible for any difference in price they might have to pay. These contractors having made default, the defendants, acting as commissioners, made a contract with other parties for the purchase of bricks, and included in the contract thus made the hauling of bricks to the custom-house; whereas, by their contract with Kendall & Co. the bricks were deliverable at the levee, from which place the plaintiff, under his contract, was entitled to have the hauling. It is for the hauling of these materials, for which it appears by the evidence the plaintiff would have been entitled, if he had done the hauling, to $6,063 95, that a recovery is sought to be had from the defendants."

"On the 21st of June, 1851, a letter was written by the commissioners to the Secretary of the Treasury, informing him that the plaintiff complained of these acts as a violation of his rights, and claimed to be paid the contract prices for the hauling thus done by others, and requesting instructions on the subject. In this letter they state that, when they were compelled to purchase bricks from others, they found that they could only get them at a reasonable price by allowing the persons from whom they were purchased the benefit of contracting to deliver them at the site of the building, and that it is the universal custom to buy such bricks delivered. They further state that, although the plaintiff insisted that by a proper construction of his contract he was entitled to all the hauling under all circumstances, they, the commissioners, thought a reasonable construction of the contract was, that they should give the plaintiff all the hauling of materials required and purchased under ordinary circumstances. To this letter, the Commissioner of Customs at Washington, to whose department the letter was referred, replies of the date of July 11, 1851, approving the construction the commissioners had placed on the contract, and instructing them not to pay to the plaintiff. A subsequent letter from the commissioners, which bears date the 30th June, 1852, after the suit was brought, is also in evidence, in which they ask for more instructions on the subject. In this letter they state that they conceived it to be their duty, in making purchases, to obtain all articles on the most favorable terms, yet, in so doing, their action is neces-

sarily controlled by existing contracts, so that no wrong be done to a contractor; that in making their recent contract with Mr. Blanc for pressed bricks, his proposition was for $18 50 per thousand, delivered at the basin, and $20 per thousand, delivered at the custom-house; that Cronan's price, according to the contract for hauling, was about $2 25 per thousand, and it was obviously the interest of the government to accept the latter price, delivered at the building, and it was accepted, but that Cronan considered it to be an evasion of the contract with him, and with some apparent reason. They express in this letter a desire to avoid any act that may have the semblance of an attempt to evade the contract with the plaintiff, and say that, if, in the opinion of the Secretary, Mr. Blanc's first proposition should have been accepted, there would be no difficulty in altering the contract with him. To this letter no answer from the Secretary is exhibited.

"On this state of facts we will first inquire whether the contract with the plaintiff was vio ated. He had bound himself under a stipulated penalty to do all the hauling at certain fixed rates, and was consequently under the obligation of being always ready with the requisite teams and laborers. This obligation produced a correlative right on his part to have the benefit to be derived from the employment of his teams in doing all the hauling, and, as it is evident, the hauling (about) which he complains was given to others, not from necessity, but for the advantage of the government in procuring the hauling to be done at cheaper rates than they would have had to pay him, we think it was a clear violation of the contract, for which the government is responsible in damages to the plaintiff."

These extracts are made from the two opinions mentioned, of the second district court of New Orleans and of the supreme court of Louisiana, for the purpose of showing, beyond all doubt, that two most respectable tribunals, in a case of which they had jurisdiction, and where the question was raised by the pleadings, had carefully considered the question and had adjudged that the true construction of the contract was that now contended for by the claimant, and the judgment of the supreme court is directly in point on this question. It was so considered by Mr. Guthrie, the Secretary of the Treasury. In his letter of the 7th August, 1854, he says: "It is shown by the decision of the court in the case of Cronan that he is entitled to the hauling of materials for the work by the original contract, and the subsequent contract made with Blanc, so far as the hauling of the bricks is concerned, is in violation of that contract. Mr. Blanc's contract should, therefore, be modified so as to pay him $20 per thousand for his bricks less the price to be paid Cronan for hauling."

It appears, however, that Mr. Blanc did not assent to this modification of his contract. In his letter to Messrs. Penn and Beauregard, the next commissioners, he says, under date of August 21, 1854, "I cannot help expressing my astonishment at the above document coming from the Treasury Department. By my contract, made with the commissioners of the new custom-house, and approved by the Hon. Secretary of the Treasury, I am bound under twenty-five thousand dollars' bond to furnish the pressed bricks required by the groined arches of the new custom-house, and to deliver them at the building.

In making the contract, my calculations were made with that view. It is just as much part of my business to haul my bricks to the building as it is to make them, and for that purpose I am obliged to keep constantly a number of teams under a very heavy expense. Any change in my regular way of doing business will put me to very great inconvenience and loss."

It seems, therefore, that the reason given by Blanc for objecting to any modification of his contract, was the same reason urged by Cronan why he should have all the hauling to do, that is, the necessity of keeping a sufficient force of teams and laborers in readiness to perform the work. Each of them stood upon his contract, and each was entitled to insist upon a compliance with its terms. The case, in fact, stands thus: The United States were in such a position that, as it turned out, it was more profitable for them to purchase bricks of Blanc, delivered a the custom-house, than to comply with the contract made with Cronan. This is the substance of the matter. The real nature of the transaction cannot be concealed by calling it a rightful purchase of bricks to be delivered at the custom-house. To say that the United States had the right to purchase property thus to be delivered is a mere evasion of the question. But that right must be so exercised as not to injure others. While the true meaning and spirit of the contract is, that Cronan shall do the hauling of the materials, to purchase bricks, not at the yard, where the price was $18 50 per thousand, but delivered at the custom-house, where the price was $20, thus paying $1 50 for the hauling, is certainly not to act upon the contract as the parties understood it. It might have been the misfortune of the United States that the contract with Kendall & Co. was not performed, but the consequences of that misfortune they should bear themselves, and should not attempt to visit them on Cronan, who is in no degree responsible for them. The commissioners might have purchased the bricks at the brick-yard, and in that case Cronan would have had the privilege of hauling them. If they had the right to purchase them delivered at the custom-house, and thus deprive Cronan of the privilege of hauling them, they had the right, if they should find the operation profitable, to purchase all the materials delivered at the custom-house, and thus to deprive Cronan of the privilege of hauling any of them, after he had made all his preparations for performing his contract. It cannot be supposed that either party so construed the contract. The commissioners had no right to make any contract which should substantially interfere with the contract already made with Cronan. This has been done. There has been a breach of the contract, and the only remaining question relates to the damages.

It appears from the testimony of George Cronan, that, in order to enable the claimant to perform his contract, it was necessary for him to invest at least five thousand dollars in the purchase of machinery, trucks, and temporary railways from vessels to the building for the removal of heavy blocks of granite, the largest of which weighed from fourteen to twenty tons. This machinery it was necessary for him to have always on hand, as he did not know at what moment orders might come from the commissioners. There were four extra four-

wheeled wagons, of which the largest wheels were eleven feet in diameter. "If he had been constantly employed in carrying on the work, his profits would have been larger than if he had been only temporarily employed, because the expenses of keeping up the teams and the wages of teamsters were still accruing even when they were unemployed, and the capital vested, as before stated, remained idle." The nature of the interruptions of the claimant's business was, "that the commissioners, in making contracts with other persons for the furnishing of certain materials of the kind which claimant was to haul to the building according to his contract, included in the price the expense of delivering such materials at the building, and thus refused the claimant the exercise of his right to haul them. On perceiving that materials were hauled to the building under such circumstances, that is, by other persons than the claimant, I went to the custom-house on behalf of the claimant, and asked an explanation, also expressing the claimant's readiness to haul the materials, and was answered by the officers at the building that such contracts as I have alluded to had been made, and claimant's proposition to haul was, therefore, refused.

This witness says that the claimant's net profits upon hauling the brick would be 95 cents per thousand, upon the lumber from 33⅓ to 50 cents per thousand, upon the lime and cement at $1 per load the profits would be from 50 to 100 per cent., and upon the sand at 90 cents per load the profits would be from 100 to 150 per cent. At these rates the profits would be as follows:

On the bricks	at 95	cents	$5,602 23
On lumber	at 41	"	593 76
On sand	at 67½	"	191 70
On lime and cement	at 75	"	77 25
			6,464 94

In relation to the necessary machinery, the testimony of Horace Blakesley is substantially like that of George Cronan; and he says, also, that to keep up the necessary machinery it would have cost the claimant not less than from $6,000 to $7,000, exclusive of the original capital. He estimates the profit on hauling bricks for three years, from the beginning of May, 1849, at about one hundred per cent., estimating the gross amount paid at $1 80 per thousand.

The testimony of Thomas K. Wharton shows the amount of the hauling of the materials for the custom-house, making the sum which Cronan would have received, if he had done the hauling, to be $12,438 99.

Jules A. Blanc testifies that the cost of hauling bricks from the new basin to the custom-house has been, from the year 1849, 75 cents per 1,000, of hauling lumber about $1 per 1,000 feet, and of hauling lime, sand, and cement, about 40 cents per load.

Firmen Levasseur testifies that when bricks are delivered at the place where they are to be used, the price of hauling them from the

new basin is added to the price of the bricks. He also says that in the years 1849, 1850, 1851, and 1852, the government of the United States, from his personal knowledge, might have obtained as many bricks as they needed, either at the old or the new basin, without being obliged to concede the right of hauling to the vendors.

It becomes necessary to ascertain, upon this evidence, what is the proper rule of damages in such a case. In the first place, it is clear that the claimant is entitled to the actual profit he would have made if he had been employed to do the hauling of the materials. In the case of the Philadelphia, Wilmington, and Baltimore Railroad Company *vs.* Story, (13 Howard, 307,) Curtis, J., says, in delivering the opinion of the court: "In case of a contract like this, the loss is, among other things, the difference between the cost of doing the work and the price to be paid for it. This difference is the inducement and real consideration which causes the contractor to enter into the contract. For this he expends his time, exerts his skill, uses his capital, and assumes the risks which attend the enterprise; and to deprive him of it when the other party has broken the contract and unlawfully put an end to the work would be unjust. There is no rule of law which requires us to inflict this injustice. * * We hold it to be a clear rule that the gain or profit of which the contractor was deprived by the refusal of the company to allow him to proceed with and complete the work was a proper subject of damages." This decision, and the good sense and reason of the rule render it unnecessary to accumulate authorities on the point.

The evidence is, that during the period in which these materials were hauled, the claimant's expenses were still going on. It was still necessary for him to keep his machinery and vehicles in order, to pay his laborers, and provide food for his horses. The evidence proves that the profits on the work would have been at least one hundred per cent. At the established rates, as shown by the schedule G g, the pay for the hauling would have amounted to the sum of $12,438 99. The profit then would have been $6,219 49, and it would have cost the claimant that sum to do the work. He incurred the same expenses while his teams and men were lying idle. The only difference would be the wear of his machinery, into which the defendants have no great claim in equity that we should inquire. If, then, he receives only his net profits, he is left just where he was in the beginning, without the inducement which caused him to enter into the contract, and for which, in the language of Mr. Justice Curtis, "he expends his time, exerts his skill, uses his capital, and assumes the risks which attend the enterprise." He cannot be placed where he would have been if he had been employed to do all the hauling, unless he receives the compensation which is provided by the ordinance of the city. This will do him no more than justice, and for this sum of $12,438 99 a bill should be reported in his favor.

IN THE COURT OF CLAIMS.

DENNIS CRONAN *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

At the instance of the petitioner, this case has been reheard, and, upon the rehearing, it has been again very fully and ably argued on both sides. We have carefully reconsidered it, and are constrained to say that we have found no good reason for any change in our former opinion. We did not, in that opinion, go into the inquiry how far the contract made with the petitioner is valid, because we did not deem it necessary. We still leave that point undecided. The only point which was then and will now be considered is, whether, assuming the contract to be valid, the petitioner has shown a breach of it.

It is plain, from the very face of the contract, that it is very inartificially and unskillfully drawn. It is by no means either clear or full in its expressions. Its language is such that the meaning of the parties can be ascertained only by construction. It recites a proposal made by the commissioners "to do all the hauling of the materials necessary to the building of said custom-house," and it is insisted that these terms "are so comprehensive as to preclude any exception." But it is obvious that these words are not to be understood in so broad a sense. There was "hauling," and necessary "hauling," to be done, which they do not embrace. The lime, for example, was hauled from the place where it was burnt to the place where it was received by the person who contracted with the commissioners to deliver it in New Orleans. It was not intended that *this* "hauling" was to be done by the petitioner. And so as regards the lumber and the granite. Much heavy and expensive "hauling" of both these articles was necessarily done before the contract with the petitioner attached to them. It does not appear where, or of whom, these articles were purchased; but neither of them was found in their original formation in or near New Orleans. They were, it is probable, prepared for market near their natural location. They were "hauled" thence to some point where they were shipped to New Orleans. When they were delivered at the point in that city designated in the contract made by the United States for their purchase, they became the property of the United States; and if it were necessary to haul them thence to the site of the custom-house, that "hauling" was to be done by the petitioner. But the phrase "*all the hauling*" embraces the one as well as the other hauling. "*All*" does not, in its literal sense, mean *a part;* and yet obviously it does mean *a part* in this contract, *i.e.*, it does not include *all* the "hauling" done at any time of the materials necessary for the erection of the "custom-house, but only *all* the "hauling" of those materials after they became the property of the United States.

We say that the words "all the hauling," as used in this contract, do not mean *all*, but *part* only. This is apparent from the whole complexion of the contract, and the practical construction which has been put upon it by all concerned. The petitioner himself does not

contend for anything else. His views differ from ours only as to the extent of the limitation to be put upon the literal meaning of those terms. He insists that they mean *all the hauling to be done within the city of New Orleans*, for the reason that the rate of compensation is to be determined by the tariff established by the ordinance of the general council of that city, and the ordinance applies only to "hauling" done in that city. There is much force in this argument, so far as it goes. But we say that the terms "all the hauling" are to be further restricted to the "hauling" of materials belonging to the United States, as if they read "all the hauling of materials belonging to the United States to be done within the city of New Orleans." The question to be considered, therefore, is, not whether the terms "all the hauling" are to be understood in their fullest sense, for it is conceded on all hands that such is not their meaning; but the true question is, what restriction shall be placed upon them?

Let us look a little more particularly into the provisions of the contract in relation to the rates of compensation. In one part of the contract the words are, "at the same rates, and agreeable to the tariff established by the general council of the city of New Orleans, on the 5th of June, A. D. 1843, in such cases." These words clearly indicate that the work to be done was to be of a similar kind to that named in the ordinance, and, we think, the fair implication is, that it was to be done within the limits of the city of New Orleans.

In another part of the contract, the language is: "And the said parties of the second part, [the commissioners,] acting in their capacity aforesaid, do hereby covenant and bind themselves to and with said party of the first part, [the petitioner,] to pay unto said party of the first part, the same rate and amount per load for hauling said building materials as are established by the ordinance aforesaid, and now in force in this city upon such subjects; except, however, as to the granite, said party of the second part agree and bind themselves to pay unto said party of the first part, the same amount and rate per load, as paid by the second municipality of the city of New Orleans for hauling granite for the new municipality hall; said rates, however, to be increased or diminished in proportion to the extra distance over which the granite shall or may be hauled for the custom-house, when compared with the distance over which the granite for the new municipality hall has been hauled, said payment to be made by said parties of the second part on the delivery of said building materials in accordance with the stipulations of the contract, or at such times as the contracting parties may agree upon hereafter." Now, whilst we do not doubt that this language, also, has reference to "hauling" to be done within the limits of the city, still this is by no means a necessary implication from the terms themselves, especially as regards the "hauling" of the granite. The rates referred to for the latter were "to be increased or diminished in proportion to the *extra* distance;" and thus expanded, they might apply as well to "hauling" done at one place as to "hauling" done at another; to "hauling" within as well as to "hauling" without the city. It will, moreover, be observed that, whilst the contract specifies that the *place of delivery* is to be designated by the superintendent or architect, no mention whatever

is made of the *place from which* the "hauling" was to be done. This would rather strengthen the construction that *quoad* the granite, the "hauling" of it was to be done without as well as within the city. Still it is plain that there is no distinction between the granite and the other materials in this respect.

It is apparent, therefore, that if the petitioner's claim be well founded, it is not because the terms "all the hauling" are used in their literal and most comprehensive sense, but because, according to their proper construction in this contract, they embrace it. The question before us, then, is one of construction.

It is not expressly laid down in the contract that if the United States shall buy materials to be delivered at the site of the custom-house, still the petitioner shall do the "hauling" of them within the city of New Orleans. Nor is it there expressly declared that the United States shall so make their contracts for materials that no "hauling" of them within the limits of the city shall be done by the vendors.

Nor is there any express provision therein that the United States shall make no purchases of materials within the city of New Orleans. If, then, the commissioners had bought materials at a point near the site of the custom-house and within the city, to which point they had been "hauled" by the vendor, would such a purchase have been a violation of the contract with the petitioner? If it would, then the effect of that contract is, that the commissioners cannot purchase materials within the city of New Orleans without being obliged to pay twice for at least a portion of the "hauling" of them; for, in the case just put, not only the "hauling," but a reasonable profit thereon, would, if the transaction was a fair one, be included in the price paid by the commissioners.

Can it be true that, if when Kendall & Co. failed to fulfill their contract, a man had been found within the city of New Orleans in the possession of bricks near the custom-house, to which point they had been *hauled* from the basin, or the new basin, the United States could not have purchased them without being obliged to pay the petitioner for "hauling" them to that point? They would have been materials necessary to the erection of the custom-house, and the "hauling" of them to the place where they were found would have been "hauling" done within the city of New Orleans. It would, moreover, have been "hauling" for which the United States would have had to pay not only the original cost thereof, but a reasonable profit on such cost, or the seller would have been a loser. And so in regard to the more probable case of lime or lumber found in the possession of merchants in the city of New Orleans, already "hauled" by them to their places of business. Would the United States, in purchasing those articles of them incur a liability to the petitioner for *such* "hauling?" We cannot believe that it can be justly so pretended. But would the case have been different if the bricks or other materials so bought had been found, not near, but actually *at* the site of the custom-house? We think not. But why not? The "hauling" would certainly be as much within the words of the contract in the one case as in the other. It would be because *such hauling* was not in the contemplation of the parties when they made the contract, or within its true intent and

meaning. And so in regard to the "hauling" of which the petitioner complains. The latter entered into the price of the articles no more and no less than the other "hauling" just mentioned would have entered into such price. In all the instances the "hauling" would be done before the United States had any ownership in the materials hauled; and for that reason in neither of them would the contract with the petitioner be violated.

The truth is, that in inquiring into the meaning of this contract, as the words employed do not expressly indicate it, we must look to its subject-matter and to the situation of the parties when it was made. There was an immense custom-house to be erected. Contracts for materials of every kind had already been made, or were in contemplation. In the very nature of things, and according to the usual course of business, it had already been, and would continue to be, found expedient to make contracts with individuals for the delivery of a very large proportion of those materials at points within the city of New Orleans, from which other persons would be required to haul them to the custom-house. The man engaged to furnish the granite would not probably find it to his interest to "haul" it from the basin to the place where it was to be used. And so with the several persons who would supply the larger portion of the other materials. We know that, in the usual course of such business, the necessities of men force them into divisions of labor and pursuit. It was plain, therefore, that the commissioners would be obliged to provide specially for a very large amount of "hauling;" but it was only the "hauling" of such materials as would not be delivered by the sellers at the site of the custom-house. They accordingly made proposals for contracts respecting it. Their proposals were accepted by the petitioner; and it was *all* of this hauling, but *of this only*, that he contracted to do. It was for *this*, and *this* alone, that it was necessary for the United States to make any special arrangement; and it is not to be presumed that the proposals of the commissioners extended beyond their necessities, or that they made a contract which was not only uncalled for, but could only tend to embarrass them. It seems to us, that to extend the contract so as to exclude the United States from the privilege of purchasing materials to be delivered at the site of the custom-house, would be to give it a meaning not contemplated by either of the parties when it was made. We doubt not that this view of the subject would be still more manifest if, in addition to the amount now claimed by the petitioner for "hauling" done by other persons, we had before us a statement of the amount which he has actually received for all the "hauling" done by himself.

It is plain, we think, from the facts in proof in this case, that the construction now contended for was not contemplated by the parties at the time the contract was made. There is no evidence in the record that the petitioner ever insisted upon this construction until the year 1851; and it seems then to have been suggested by the contract made between the United States and Jules A. Blanc. It appears from the paper G, annexed to the deposition of Thomas K. Wharton, that all the *sand* embraced by it was *hauled* in 1849 and 1850, and that the quantity was 28,056 barrels, of which the petitioner

hauled 26,920, and other persons 1,136; that all the *cement* embraced by it was hauled in 1849, 1850, 1851, and 1852; that the quantity was 5,760 barrels, of which the petitioner *hauled* 6,202, and other persons 442, and that of the quantity hauled by other persons 257 barrels were hauled on the 14th day of October, A. D. 1851, and the rest prior to the year 1851; that all the bricks embraced by it were delivered by other persons than the petitioner in the years 1849 and 1850; and that all the lumber embraced by it was delivered in 1849, 1850, 1851, and 1852; that the whole quantity was 1,779,149 feet, of which the petitioner delivered 366,214, and other persons 1,422,935; and that the quantity delivered in 1851 and 1852 was 377,736 feet, of which the petitioner delivered 64,454, and other persons 303,282. So that the account of "*hauling*" done by other persons than the petitioner prior to 1851, *i. e.*, in 1849 and 1850, may be thus stated:

Sand, 1,136 barrels, say 284 loads, at 90 cents.....	$255 60
Cement, 442 — 257 = 185 barrels, say 37 loads, at $1 a load.....	37 00
Bricks, 2,657,016, at $1 80 a thousand.....	4,782 62
Lumber, 1,422,935 — 303,282 = 1,119,753 feet, at $1 a thousand.....	1,119 65
	6,184 87

So that "hauling" to an amount exceeding six thousand dollars, and running through two years, was actually done by other persons who sold the materials to be delivered at the custom-house before it had ever occurred to the petitioner that the contract made with him was thereby violated. This practical construction of the contract, concurred in by all parties under such circumstances and for such a length of time, goes far, we think, to strengthen our views.

The petitioner expressly undertook "to haul all the building materials, including the granite, and to deliver the same, when thereto required, at such points as may be designated by the superintendent or architect of said building." "When thereto required," by whom? By the United States. The materials, then, must have been materials belonging to the United States, because they could not properly contract for the "hauling" of any other. Moreover, in contracting for the purchase of bricks to be delivered at the custom-house, the United States did not contract for "hauling" as "hauling." It may have entered, and doubtless did enter, into the price paid for the materials, but was not distinguishable from any other element, which entered into and constituted the price. The elements of the price were merged in it, and had no separate existence; and, so far as regards the United States, the "hauling" as one of those elements was as if it never existed. Hence, in purchasing articles to be delivered at the custom-house, they did not, either in form or in substance, contract for the "hauling" of them. Such materials did not become theirs until their delivery at the custom-house, and the price they paid for them was the price of the materials *at that place*. So far as the United States were concerned, therefore, there was no "hauling"

of these articles necessary, and consequently none which they could require the petitioner to do, or, in other words, none to be done by the petitioner, when thereto required by the United States. But the petitioner insists that the true meaning of the contract is, not only that he shall haul all the materials which the United States may have to haul, but that the United States shall not have or purchase any materials which do not require "hauling." It seems to us that express words are necessary for such a purpose. They are not to be found in this contract.

But it is supposed that the construction now contended for by the petitioner was judicially determined by the second district court of New Orleans, and afterwards, on appeal, by the supreme court of Louisiana, in the case of Cronan *vs.* Peters.—(9 Lou. Ann. Rep., 468.) As regards the United States, that case was *res inter alios acta.* Not only is this true, but the breach of the contract was rather assumed than considered and decided by either court in that case. The only point discussed by counsel in the supreme court, or to which the especial attention of the court was directed, was, whether the defendant was personally liable. The counsel for the plaintiff said nothing at all about a breach of the contract, and the counsel for the defendant merely said, that if the plaintiff "has any claim for damages for breach of the contract, it must be preferred against the government." The court say: "He had bound himself under a stipulated penalty to do all the hauling at certain fixed rates, and was consequently under the obligation of being always ready with the requisite teams and laborers. This obligation produced a correlative right on his part to have the benefit to be derived from the employment of his teams in doing all the hauling,* and as it is evident that the hauling, subject to the qualification in said article stated, [* it should probably read, "all the hauling, subject to the qualification in said article stated, and as it is evident that the hauling of] which he complains was given to others, not from necessity, but for the advantage of the government in procuring the hauling to be done at cheaper rates than they would have had to pay him, we think it was a clear violation of the contract, for which the government is responsible in damages to the plaintiff." It is plain that upon the facts the supreme court were of the opinion that the United States had employed other persons than the petitioner to do "hauling" *as such*, and thereby violated the contract with the petitioner. How the facts appeared we have no means of determining. They are very imperfectly reported, and we have not a full record of the case. But the point regarding the breach of the contract was, in the view taken by both courts of the case, wholly immaterial; for whether there was a breach or not, still the defendant was not personally liable. We do not think that the precise question now before us was decided in the case of Cronan *vs.* Peters.

Such being our views, we have not considered what would be the proper measure of damages if it appeared from the evidence that the contract in question had been broken. We have not deemed it necessary to go into an examination of that question.

We adhere to our former opinion, that the petitioner is not entitled to relief.

PETITION

OF

SAMUEL GARDINER, JR.,

THAT

Congress will purchase his patent for lighting gas, &c., by electricity.

APRIL 5, 1858.—Referred to the Committee on Public Buildings and Grounds, and ordered to be printed.

To the Congress of the United States:

The undersigned, Samuel Gardiner, junior, of the city of New York, respectfully represents, that he has made a valuable discovery, by which he is enabled to "turn on" and light gas instantaneously, by the use of a galvanic current, through the manipulation of telegraphic keys, placed at any distance from the chandelier or other apparatus used for conveying the gas to the burners. For this discovery or invention letters patent have been granted to your petitioner by the Commissioner of Patents of the United States.

The application of this discovery has been made to the lighting of a large public building in New York city, where it has stood the test of nearly a year, giving entire satisfaction; and more recently to the lighting of the large chandelier of the United States Senate chamber, where the instantaneous effect of your petitioner's apparatus in lighting and extinguishing the fifteen hundred burners of that chandelier, in no appreciable time, from the floor of the chamber, has been witnessed with admiration by the members of the Senate, and by many hundreds of individuals. By the use of your petitioner's invention, any number of gas burners, at any distance from the operator, can be lighted with equal facility and certainty.

The utility of the application of this invention to the lighting of all public buildings, especially the new halls of the Senate and House of Representatives, the rotundo of the Capitol, and the President's house, your petitioner believes must be admitted by all. It is by no means expensive, and the apparatus, when once attached, can be managed and kept in perfect order by any individual of ordinary capacity, and at a very trifling annual expense. Only one galvanic battery would be necessary to light the entire Capitol; and the lighting of the different apartments would be under the perfect control of the person having the charge of the lighting of each.

Your petitioner has no means of ascertaining the cost of the "carrier tube," now in use in lighting the gas above the new hall of the House of Representatives, but, from his own examination of that tube, and his knowledge of the labor that must have been bestowed upon it, he believes he is justified in the conclusion that his apparatus can be put up and applied to the lighting of the entire Capitol at a less expense than the cost of that tube; and Captain Meigs, under whose direction and supervision it was made and applied, in an article published by him, in the *National Intelligencer*, of the 18th December, 1857, admits "that the electric current is, perhaps, less liable to get out of order, if of long use, than the 'carrier tube'."

Your petitioner further states that his invention would be invaluable to government during a time of war, as it is applicable to the discharge of sub-marine batteries, at any instant of time, with perfect certainty, the operator being at any distance that may be advisable from the point of explosion. It may also be applied to mining operations, and to the discharge of cannon, with equal certainty; and wires once laid to a mine under ground, or a battery under water, may remain for months, and, it is believed, even for years, and retain all their powers of transmitting the electric current.

The invention can also be applied in a most admirable manner to making signal lights, as the apparatus where the light is to be shown can be placed at any required point or points, in such a manner as not to be conspicuous to ordinary observers, and can be communicated to at any distance, and the light itself will be of intense brilliancy, and may be of any desirable color.

Your petitioner prays that you will take into consideration these various uses to which his invention may be applied, and, in view of its adaptability to such important national purposes, that you will authorize the purchase of his patent right for the use of the government.

Your petitioner has been at great expense in bringing his invention to its present state of perfection; it is entirely American in its conception and origin, and he respectfully submits whether it is not worthy of being generously considered by Congress.

SAM'L GARDINER, JR.

WASHINGTON, *April* 5, 1858.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 221.

RESOLUTIONS

OF THE

LEGISLATURE OF THE STATE OF NEW YORK,

IN FAVOR

Of the enactment of a law to provide for the final settlement and payment of the half pay for life which was promised by the continental Congress to the officers of the revolutionary army.

APRIL 5, 1858.—Referred to the Committee on Revolutionary Claims, and ordered to be printed.

STATE OF NEW YORK, IN ASSEMBLY, MARCH 8, 1858.

CONCURRENT RESOLUTIONS in relation to the officers of the revolutionary army.

Resolved, (*if the Senate concur*,) That, having witnessed with pleasure the efforts which were made during the past session of Congress for the final settlement and payment of our revolutionary debt, we consider that our government is under the most solemn obligations to carry out the promises of the continental Congress contained in the resolutions of the 21st October, 1780, January 7, 1781, and March 8, 1785, by allowing to the officers of the revolutionary army the half pay for life to which they are entitled under the resolutions, for the payment of which the national faith is pledged. That all those senators and representatives who have taken a lively interest in behalf of the officers of the revolution, their widows and children, are entitled to the thanks and gratitude of the country.

Resolved, That our senators in Congress be instructed, and our members of the House of Representatives be requested, to advocate and vote for a bill to provide for the final settlement and payment of the half pay for life which was promised by the continental Congress to the officers of the revolutionary army, who should serve to the end of the war or until the time of their reduction, deducting the value of commutation certificates issued in their names, and that the amount found due be paid to the officers, if alive, and if dead, to his widow and children equally, and if none, to the next of kin of such deceased officer; and, also, that suitable provision be made for the widows and children of those officers who were killed in battle, or died in the service; and that such bill conform to the principles contained in the

resolutions of October 21, 1780, July 7, 1781, and 5th March, 1785, and we respectfully ask the adoption of this principle and the passage of the bill by Congress, as due by every consideration of good faith, honor and justice, to those brave men who fought our battles and shed their blood in defence of our country's rights and independence.

Resolved, That his excellency the governor cause these resolutions to be transmitted to the president of the Senate and the speaker of the House of Representatives of the United States, for the consideration of those bodies respectively, and to each of the senators and representatives in Congress from this State.

In assembly, March 8, 1858. Were duly passed.

By order, &c., D. WILSON, *Clerk.*

In the senate, March 13, 1858. Were duly passed.

By order, &c., S. P. ALLEN, *Clerk.*

STATE OF NEW YORK.

EXECUTIVE DEPARTMENT,
Albany, March 25, 1858.

SIR: I am directed by the governor to transmit, herewith, concurrent resolutions of the senate and assembly, "in relation to the officers of the revolutionary army."

Very respectfully, your obedient servant,

HENRY J. SEAMAN,
Private Secretary.

Hon. WM. H. SEWARD, *Senate.*

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 222.

RESOLUTIONS

OF

THE LEGISLATURE OF THE STATE OF NEW JERSEY,

IN FAVOR OF

The advancement of Lieutenant M. F. Maury to that position in the navy to which his distinguished services entitle him.

APRIL 5, 1858. Ordered to lie on the table and be printed.

STATE OF NEW JERSEY.

JOINT RESOLUTIONS relative to Lieutenant M. F. Maury, of the United States navy.

1. *Be it resolved by the senate and general assembly of the State of New Jersey,* That among those whose services have been most beneficial to mankind, Lieutenant M. F. Maury, of the United States navy, stands prominent, in that his great practical mind has, by close attention and the application of scientific knowledge and skill to the winds of heaven and the currents of the ocean, given such direction to the commerce of nations as to lessen time, insure safety, and add the value of millions, and has so acquainted itself with the storm as to disarm it of its terrors to thousands of mariners, whose daily path is among the perils of the deep.

2. *And be it resolved,* That such services most justly entitle him who has rendered them to the thanks of his countrymen and the praise of the world, and to honorable advancement and promotion.

3. *And be it resolved,* That our senators and representatives in Congress be, and they are, desired to make known to the President of the United States the respectful request of this legislature, that Lieutenant Maury may be advanced to that high rank and position in the navy to which his distinguished services entitle him.

4. *And be it resolved,* That the governor of this State be, and he is hereby, requested to transmit a copy of these resolutions to the President of the United States, and to each of our senators and representatives in Congress.

Approved March 18, 1858.

STATE OF NEW JERSEY.—I, Thomas S. Allison, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of joint resolutions passed by the legislature of this State, and approved March 18, 1858, as taken from, and compared with, the original now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Trenton, in said State, this second day of April, A. D. one thousand eight hundred and fifty-eight.

[SEAL.]

THOS. S. ALLISON,
Secretary of State.

EXECUTIVE DEPARTMENT OF NEW JERSEY,
Trenton, N. J., April 2, 1858.

I have the honor to transmit herewith a copy of joint resolutions, passed by the legislature of this State, agreeably to the requirements of said resolutions.

Most respectfully, your obedient servant,

WM. A. NEWELL,
Governor of New Jersey.

Honorable WM. WRIGHT.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 223.

RESOLUTIONS

OF THE

LEGISLATURE OF NEW JERSEY,

IN FAVOR OF

Appropriations for the better preservation of life and property in cases of shipwreck, and for the more effective working of the government apparatus on the coast of New Jersey.

APRIL 5, 1858.—Referred to the Committee on Commerce and ordered to be printed.

STATE OF NEW JERSEY.

JOINT RESOLUTIONS for the better preservation of life and property, and the more effective working of the government apparatus on the New Jersey coast.

Whereas the close proximity of the New Jersey coast to the entrance to New York harbor renders it necessary for vessels bound from the east and south to pass said coast, and the peculiar formation of said coast, running from Barnegat inlet south, in a southwesterly direction, with bars and shoals, making it probably the most dangerous coast along the Atlantic; and whereas with our increasing maritime business, both as regards commerce and emigration, there necessarily must be, and is, an increase of disasters by shipwreck on our coast, without a corresponding increase of the means requisite for saving life and property; and whereas not more than about one vessel in twenty stranded on our shores properly belongs to New Jersey, while all the large class of vessels carrying passengers are from other States and other nations, whose dead the State of New Jersey are obliged to bury, at no inconsiderable expense, making it burdensome and oppressive, and affording the State, we believe, just cause for complaint, and demanding a remedy. Therefore—

1. *Be it resolved by the Senate and General Assembly of the State of New Jersey*, That our senators and representatives in Congress be respectfully requested to use their influence for and urge the passage of a bill making such appropriations for the better preservation of life and property, and for defraying the expenses incurred in burying the dead, not citizens of this State, cast upon our shores by shipwreck, as will be more commensurate with the demand, as follows:

First. For defraying the expenses incurred in burying the dead cast upon the New Jersey coast by shipwreck, not citizens of this State, estimated at three thousand dollars.

Second. Pay of two superintendents, at fifteen hundred dollars per annum, three thousand dollars.

Third. Pay of station house keepers, (twenty-eight in number,) to reside in the station houses, each two hundred dollars, five thousand six hundred dollars.

Fourth. Pay of boat's crew (seven in number) at every alternate station house, (fourteen stations,) subject to the call of the keeper, only when required, at two dollars per day, when in actual service, say thirty days in the year, five thousand eight hundred and eighty dollars.

Fifth. Building for station houses between Squan and Little Egg harbor, capable of holding three hundred persons, at one thousand dollars each, four thousand dollars.

Sixth. For fitting up all the old station houses in a tenantable condition for the residence of the keepers, say three hundred dollars each, seven thousand four hundred dollars.

Seventh. For a good stove, cooking apparatus, water tank, &c., at each station house, one thousand two hundred and sixty dollars.

Eighth. For two barrels hard bread, and one each of pork and beef, to be placed at every alternate station house, one thousand and eight dollars.

Ninth. For a new wooden boat, to be placed at each station house, four thousand two hundred dollars.

Tenth. For replenishing apparatus; for erection of signal poles, &c., at every station; for erection of pointers at intermediate places between the stations, directing the lost mariner to the nearest place where shelter and relief can be had; for three six-pound guns, to be placed at every alternate station house, to be used as signals to call aid from the main, and also to warn vessels in port and at sea of an approaching storm, say three thousand seven hundred dollars.

Eleventh. To encourage and reward the heroic efforts of those who jeopardize their lives to save the lives and property of the shipwrecked, to be paid at the discretion of the Secretary of the Treasury of the United States, say one thousand dollars.

Twelfth. For constructing an electro-magnetic telegraph line from the present terminus of the Sandy Hook telegraph, at Squan village, along the coast of Cape May, by which the east and northeast storms (which generally commence south and work north) may be anticipated, and information received at the different stations from twelve to thirty-six hours in advance of their arrival, allowing time to call the crews from the main, and have the apparatus in a state of readiness for an emergency, estimated at fifteen thousand dollars.

Thirteenth. To authorize Lieutenant M. F. Maury, of the National Observatory and Hydrographical Office, at Washington, to receive telegraphic weather reports from such points as he may deem most advantageous, and to transmit to the New Jersey coast necessary intelligence of approaching storms, in order that the whole apparatus for saving life and property may be worked advantageously and effectually.

Fourteenth. For supplying copies of Lieutenant Maury's "Chart and Sailing Directions from Sea to Sandy Hook," to vessels on re-

ceiving their clearance from ports of the United States, through the collectors of said ports, or such medium as the Secretary of the Treasury may deem best, estimated at ————.

2. *And be it resolved*, That his excellency the governor of this State be, and he is hereby, respectfully requested to transmit to each of our senators and representatives in Congress a copy of the above resolutions and preamble.

3. *And be it resolved*, That the governor of this State be further requested to transmit a copy of the above resolutions and preamble to the governors respectively of the States of Maine, New Hampshire, Rhode Island, Massachusetts, Connecticut, New York, Delaware, Maryland, Virginia, South Carolina, North Carolina, Georgia, and other States interested, requesting them to present the matter before their respective legislatures.

Approved March 18, 1858.

STATE OF NEW JERSEY.

I, Thomas S. Allison, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of a preamble and joint resolutions passed by the legislature of this State, and approved March 18, 1858, as taken from and compared with the original now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Trenton, in said State, this second day of April, A. D. 1858.

[L. S.]

THOMAS S. ALLISON,
Secretary of State.

EXECUTIVE DEPARTMENT OF NEW JERSEY,
Trenton, N. J., April 2, 1858.

I have the honor to transmit herewith a copy of joint resolutions passed by the legislature of this State, agreeably to the requirements of said resolutions.

Most respectfully, your obedient servant,

WILLIAM A. NEWELL,
Governor of New Jersey.

Hon. WILLIAM WRIGHT.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DO. No. 224.

RESOLUTIONS

OF THE

LEGISLATURE OF THE STATE OF NEW JERSEY,

IN FAVOR OF

A donation of public lands to that State, in common with the other States of the Union, for the founding and maintaining of agricultural colleges therein.

APRIL 5, 1858.—Referred to the Committee on Public Lands, and ordered to be printed.

STATE OF NEW JERSEY.

JOINT RESOLUTIONS relative to obtaining from the United States a donation of public lands for the founding and maintaining of an agricultural college in the State of New Jersey.

1. *Be it resolved by the senate and general assembly of the State of New Jersey*, That the senators and representatives in Congress of this State be, and they are hereby, requested to use their best exertions to obtain from the general government a donation of public lands to this State, in common with the other States of the Union, for the founding and maintaining in each of the several States of an agricultural college, for the promotion of the science and practice of agriculture; and, for that purpose, to favor any proper bill which is now depending, or which shall hereafter be presented, before the two houses of Congress, the object of which may be to secure such donation.

2. *And be it resolved*, That the governor of this State be, and he is hereby, requested to transmit a copy of these resolutions to each of our senators and representatives in Congress.

Approved March 18, 1858.

STATE OF NEW JERSEY:

I, Thomas S. Allison, secretary of state of the State of New Jersey, do hereby certify that the foregoing is a true copy of joint resolutions passed by the legislature of this State, and approved March 18, 1858,

as taken from and compared with the original now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my [L. S.] official seal, at Trenton, in said State, this 2d day of April, A. D. 1858.

THOMAS S. ALLISON,
Secretary of State.

EXECUTIVE DEPARTMENT OF NEW JERSEY,
Trenton, N. J., April 2, 1858.

I have the honor to transmit herewith a copy of joint resolutions passed by the legislature of this State, agreeably to the requirements of said resolutions.

Most respectfully, your obedient servant,

WILLIAM A. NEWELL,
Governor of New Jersey.

Hon. WILLIAM WRIGHT.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 225.

RESOLUTIONS

OF THE

LEGISLATURE OF THE STATE OF NEW JERSEY,

IN FAVOR OF

The restoration of the ports of Jersey City and Camden to that State, and, if necessary, of making them ports of entry; also the estaablishing ports of entry at Tom's river and Atlantic City, and a modification of the laws relating to the coasting trade.

APRIL 5, 1858.—Referred to the Committee on Commerce, and ordered to be printed.

STATE OF NEW JERSEY.

Whereas New Jersey does not receive credit for the amount of commerce to which she is entitled, and suffers much inconvenience from the fact that ports in the State are attached to the revenue districts of New York and Philadelphia; and whereas her citizens engaged in the coasting trade are subjected to great loss of time and expense, from the want of a sufficient number of ports of entry, as well as by reason of the onerous laws existing in relation to the said coasting trade: Therefore—

1. *Be it resolved by the senate and general assembly of the State of New Jersey*, That our senators and representatives in Congress be requested to urge the passage of a law restoring to New Jersey the ports of Jersey City and Camden, and, if necessary, to make them ports of entry; also to establish ports of entry at Tom's river and Atlantic City, and to use their endeavors to effect such modification of the laws governing the coasting trade as will remove the burdens and exactions now imposed on the owners and masters of vessels.

2. *And be it resolved*, That the governor be requested to forward a copy of the resolutions to each of our senators and representatives in Congress.

Approved March 17, 1858.

STATE OF NEW JERSEY:

I, Thomas S. Allison, secretary of state of the State of New Jersey, do hereby certify that the foregoing is a true copy of a preamble and joint resolutions passed by the legislature of this State, and approvde

March 17, 1858, as taken from and compared with the original now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Trenton, in said State, this second day of April, A. D. one thousand eight hundred and fifty-eight.

[SEAL.]

THOMAS S. ALLISON,
Secretary of State.

EXECUTIVE DEPARTMENT OF NEW JERSEY,
Trenton, N. J., April 2, 1858.

I have the honor to transmit herewith a copy of joint resolutions passed by the legislature of this State, agreeably to the requirements of said resolutions.

Most respectfully, your obedient servant,

WM. A. NEWELL,
Governor of New Jersey.

Hon. WILLIAM WRIGHT.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 226.

IN THE SENATE OF THE UNITED STATES.

APRIL 5, 1858.—Ordered to be printed.

Mr. DOUGLAS submitted the following

DOCUMENT.

[To accompany Bill S. 239]

THE PREAMBLE, CONSTITUTION, AND SCHEDULE,

ADOPTED BY THE

People of the Territory of Oregon, preparatory to admission into the Union of the States.

CONSTITUTION OF THE STATE OF OREGON.

PREAMBLE.

We, the people of the State of Oregon, to the end that justice be established, order maintained, and liberty perpetuated, do ordain this constitution.

ARTICLE I.—*Bill of Rights.*

SECTION 1. We declare that all men, when they form a social compact, are equal in rights; that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper.

SEC. 2 All men shall be secured in their natural right to worship Almighty God according to the dictates of their own consciences.

SEC. 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

SEC. 4. No religious test shall be required as a qualification for any office of trust or profit.

SEC. 5. No money shall be drawn from the treasury for the benefit of any religious or theological institution, nor shall any money be appropriated for the payment of any religious services in either house of the legislative assembly.

SEC. 6. No person shall be rendered incompetent as a witness or

juror in consequence of his opinions on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

SEC. 7. The mode of administering an oath or affirmation shall be such as may be most consistent with, and binding upon, the conscience of the person to whom such oath or affirmation may be administered.

SEC. 8. No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.

SEC. 9. No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

SEC. 10. No court shall be secret, but justice shall be administered openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation.

SEC. 11. In all criminal prosecutions the accused shall have the right to public trial by an impartial jury in the county in which the offence shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.

SEC. 12. No person shall be put in jeopardy twice for the same offence, nor be compelled in any criminal prosecution to testify against himself.

SEC. 13. No person arrested or confined in jail shall be treated with unnecessary rigor.

SEC. 14. Offences, except murder and treason, shall be bailable by sufficient sureties. Murder and treason shall not be bailable where the proof is evident or the presumption strong.

SEC. 15. Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice.

SEC. 16. Excessive bail shall not be required, nor excessive fines imposed. Cruel and unusual punishments shall not be inflicted, but all penalties shall be proportioned to the offence.

SEC. 17. In all criminal cases whatever, the jury shall have the right to determine the law and the facts, under the direction of the court as to the law, and the right of new trial, as in civil cases.

SEC. 18. In all civil cases the right of trial by jury shall remain inviolate.

SEC. 19. Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.

SEC. 20. There shall be no imprisonment for debt, except in case of fraud or absconding debtors.

SEC. 21. No law shall be passed granting to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

SEC. 22. No *ex post facto* law, or law impairing the obligations of contracts, shall ever be passed; nor shall any law be passed, the taking effect of which shall be made to depend upon any authority except as provided in this constitution: *Provided*, That laws locating the capital of the State, locating county seats, and submitting town and city corporate acts, and other local and special laws, may take effect or not, upon a vote of the electors interested.

SEC. 23. The operation of the laws shall never be suspended except by the authority of the legislative assembly.

SEC. 24. The privilege of the writ of *habeas corpus* shall not be suspended unless, in case of rebellion or invasion, the public safety require it.

SEC. 25. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid or comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

SEC. 26. No conviction shall work corruption of blood or forfeiture of estate.

SEC. 27. No law shall be passed restraining any of the inhabitants of the State from assembling together in a peaceable manner to consult for their common good; nor for instructing their representatives; nor from applying to the legislature for redress of grievances.

SEC. 28. The people shall have the right to bear arms for the defence of themselves and the State, but the military shall be kept in strict subordination to the civil power.

SEC. 29. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

SEC. 30. No law shall be passed granting any title of nobility, or conferring hereditary distinction.

SEC. 31. No law shall be passed prohibiting emigration from the State.

SEC. 32. White foreigners, who are or may hereafter become residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and descent of property, as native born citizens. And the legislative assembly shall have power to restrain and regulate the immigration to this State of persons not qualified to become citizens of the United States.

SEC. 33. No tax or duty shall be imposed without the consent of the people or their representatives in the legislative assembly, and all taxation shall be equal and uniform.

SEC. 34. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

ARTICLE II.—*Suffrage and Elections.*

SECTION 1. All elections shall be free and equal.

SEC. 2. In all elections, not otherwise provided for by this constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State

during the six months immediately preceding such election, and every white male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States one year preceding such election, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote at all elections authorized by law.

SEC. 3. No idiot or insane person shall be entitled to the privileges of an elector; and the privilege of an elector shall be forfeited by a conviction of any crime which is punishable by imprisonment in the penitentiary.

SEC. 4. For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States or of this State; nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum at public expense; nor while confined in any public prison.

SEC. 5. No soldier, seaman, or marine in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the State in consequence of having been stationed within the same, nor shall any such soldier, seaman, or marine have the right to vote.

SEC. 6. No negro, Chinaman, or mulatto shall have the right of suffrage.

SEC. 7. Every person shall be disqualified from holding office during the term for which he may have been elected, who shall have given or offered a bribe, threat, or reward to procure his election.

SEC. 8. The legislative assembly shall enact laws to support the privilege of free suffrage, prescribing the manner of regulating and conducting elections, and prohibiting, under adequate penalties, all undue influence therein from power, bribery, tumult, and other improper conduct.

SEC. 9. Every person who shall give or accept a challenge to fight a duel, or shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit.

SEC. 10. No person holding a lucrative office or appointment under the United States, or under this State, shall be eligible to a seat in the legislative assembly; nor shall any person hold more than one lucrative office at the same time, except as in this constitution expressly permitted; provided that officers in the militia, to which there is attached no annual salary, and the office of postmaster, where the compensation does not exceed one hundred dollars per annum, shall not be deemed lucrative.

SEC. 11. No person who may hereafter be a collector or holder of public money shall be eligible to any office of trust or profit until he shall have accounted for and paid over, according to law, all sums for which he may be liable.

SEC. 12. In all cases, except treason, felony, and breach of the peace,

electors shall be free from arrest in going to elections, during their attendance there, and in returning from the same; and no elector shall be obliged to do duty in the militia on any day of election, except in time of war or public danger.

SEC. 13. In all cases in which it is provided that an office shall not be filled by the same person more than a certain number of years continuously, an appointment pro tempore shall not be reckoned a part of that term.

SEC. 14. General elections shall be held on the first Monday of June biennially.

SEC. 15. In all elections by the legislative assembly, or by either branch thereof, votes shall be given openly, or *viva voce*, until the legislative assembly shall otherwise direct.

SEC. 16. In all elections held by the people under this constitution, the person or persons who shall receive the highest number of votes shall be declared duly elected.

SEC. 17. All qualified electors shall vote in the election precinct in the county where they may reside for county officers, and in any county in the State for State officers, or in any county of a congressional district in which such electors may reside for members of Congress.

ARTICLE III.—*Distribution of Powers.*

SECTION. 1. The powers of the government shall be divided into three separate departments—the legislative, the executive, including the administrative, and the judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in this constitution expressly provided.

ARTICLE IV.—*Legislative Department.*

SECTION 1. The legislative authority of the State shall be vested in the legislative assembly, which shall consist of a senate and house of representatives. The style of every bill shall be, "Be it enacted by the legislative assembly of the State of Oregon," and no law shall be enacted except by bill.

SEC. 2. The senate shall consist of sixteen and the house of representatives of thirty-four members, which number shall not be increased until the year eighteen hundred and sixty; after which time the legislative assembly may increase the number of senators and representatives, always keeping as near as may be the same ratio as to the number of senators and representatives: *Provided*, That the senate shall never exceed thirty and the house of representatives sixty members.

SEC. 3. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the State may, from time to time, be divided by law.

SEC. 4. The senators shall be elected for the term of four years, and representatives for the term of two years, from the day next after their general election: *Provided, however*, That the senators elect at the first session of the legislative assembly under this constitution shall

be devided by lot into two equal classes, as nearly as may be, and the seats of senators of the first class shall be vacated at the expiration of two years, and those of the second class at the expiration of four years; so that one-half, as nearly as possible, shall be chosen biennially forever thereafter. And in case of the increase of the number of senators, they shall be so annexed by lot to one or the other of the two classes as to keep them as nearly equal as possible.

SEC. 5. The legislative assembly shall, in the year eighteen hundred and sixty-five, and every ten years after, cause an enumeration to be made of all the white population of the State.

SEC. 6. The number of senators and representatives shall, at the session next following an enumeration of the inhabitants by the United States, or this State, be fixed by law, and apportioned among the several counties according to the number of white population in each. And the ratio of senators and representatives shall be determined by dividing the whole number of white population by the number of senators and representatives, respectively; and the number of senators and representatives to which any county or district shall be entitled shall be determined by dividing the whole number of white population of such county or district by such respective ratios; and when a fraction shall result from such division which shall exceed one-half of said ratio, such county or district shall be entitled to a member for such fraction. And in case any county shall not have the requisite population to entitle such county to a member, then such county shall be attached to some adjoining county for senatorial or representative purposes.

SEC. 7. A senatorial district, when more than one county shall constitute the same, shall be composed of contiguous counties, and no county shall be divided in creating senatorial districts.

SEC. 8. No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States; nor any one who has not been, for one year next preceding his election, an inhabitant of the county or district whence he may be chosen. Senators and representatives shall be at least twenty-one years of age.

SEC. 9. Senators and representatives in all cases, except for treason, felony, or breaches of the peace, shall be privileged from arrest during the session of the legislative assembly, and in going to and returning from the same; and shall not be subject to any civil process during the session of the legislative assembly, nor during the fifteen days next before the commencement thereof. Nor shall a member, for words uttered in debate in either house, be questioned in any other place.

SEC. 10. The sessions of the legislative assembly shall be held biennially at the capital of the State, commencing on the second Monday of September, in the year eighteen hundred and fifty-eight, and on the same day of every second year thereafter, unless a different day shall have been appointed by law

SEC. 11. Each house, when assembled, shall choose its own officers; judge of the election, qualifications, and returns of its own members; determine its own rules of proceeding, and sit upon its own adjournments; but neither house shall, without the concurrence of the other,

adjourn for more than three days, nor to any other place than that in which it may be sitting.

SEC. 12. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members. A quorum being in attendance, if either house fail to effect an organization within the first five days thereafter, the members of the house so failing shall be entitled to no compensation from the end of the said five days until an organization shall have been effected.

SEC. 13. Each house shall keep a journal of its proceedings. The yeas and nays on any question shall, at the request of any two members, be entered, together with the names of the members demanding the same, on the journal; provided that, on a motion to adjourn, it shall require one-tenth of the members present to order the yeas and nays.

SEC. 14. The doors of each house and of committees of the whole shall be kept open, except in such cases as, in the opinion of either house, may require secrecy.

SEC. 15. Either house may punish its members for disorderly behavior, and may, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.

SEC. 16. Either house during its session may punish by imprisonment any person not a member who shall have been guilty of disrespect to the house by disorderly or contemptuous behavior in its presence, but such imprisonment shall not at any time exceed twenty-four hours.

SEC. 17. Each house shall have all powers necessary for a branch of the legislative department of a free and independent State.

SEC. 18. Bills may originate in either house, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the house of representatives.

SEC. 19. Every bill shall be read by sections, on three several days, in each house, unless, in case of emergency, two-thirds of the house where such bill may be depending shall, by a vote of yeas and nays, deem it expedient to dispense with this rule; but the reading of a bill by sections on its final passage shall in no case be dispensed with, and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays.

SEC. 20. Every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

SEC. 21. Every act or joint resolution shall be plainly worded, avoiding, as far as practicable, the use of technical terms.

SEC. 22. No act shall ever be revised or amended by mere reference to its title; but the act revised or section amended shall be set forth and published at full length.

SEC. 23. The legislative assembly shall not pass special or local laws in any of the following enumerated cases; that is to say:

Regulating the jurisdiction and duties of justices of the peace and of constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying, opening and working on highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys, and public squares;

Summoning and empanneling grand and petit jurors;

For the assessment and collection of taxes for State, county, township, or road purposes;

Providing for supporting common schools, and for the preservation of school funds;

In relation to interest on money;

Providing for opening and conducting elections of State, county, or township officers, and designating the places of voting;

Providing for the sale of real estate belonging to minors, or other persons laboring under legal disabilities, by executors, administrators, guardians, or trustees.

SEC. 24. Provision may be made by general law for bringing suit against the State as to all liabilities originating after or existing at the time of the adoption of this constitution; but no special act authorizing such suit to be brought, or making compensation to any person claiming damages against the State, shall ever be passed.

SEC. 25. A majority of all the members elected to each house shall be necessary to pass every bill or joint resolution; and all bills or joint resolutions so passed shall be signed by the presiding officers of the respective houses.

SEC. 26. Any member of either house shall have the right to protest, and have his protest, with his reasons for dissent, entered on the journal.

SEC. 27. Every statute shall be a public law, unless otherwise declared in the statute itself.

SEC. 28. No act shall take effect until ninety days from the end of the session at which the same shall have been passed, except in case of emergency; which emergency shall be declared in the preamble or in the body of the law.

SEC. 29. The members of the legislative assembly shall receive for their services a sum not exceeding three dollars a day from the commencenent of the session; but such pay shall not exceed, in the aggregate, one hundred and twenty dollars for per diem allowance for any one session.

When convened in extra session by the governor they shall receive three dollars per day, but no extra session shall continue for a longer period than twenty days. They shall also receive the sum of three dollars for every twenty miles they shall travel in going to and returning from their place of meeting, on the most usual route. The presiding officers of the assembly shall, in virtue of their office, re-

ceive an additional compensation equal to two-thirds of their per diem allowance as members.

SEC. 30. No senator or representative shall, during the time for which he may have been elected, be eligible to any office the election to which is vested in the legislative assembly; nor shall be appointed to any civil office of profit which shall have been created or the emoluments of which shall have been increased during such term; but this latter provision shall not be construed to apply to any officer elective by the people.

SEC. 31. The members of the legislative assembly shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: I do solemny swear (or affirm, as the case may be) that I will support the Constitution of the United States and the constitution of the State of Oregon, and that I will faithfully discharge the duties of senator (or representative, as the case may be) according to the best of my ability. And such oath may be administered by the governor, secretary of state, or a judge of the supreme court.

ARTICLE V.—*Executive Department.*

SECTION 1. The chief executive power of the State shall be vested in a governor, who shall hold his office for the term of four years; and no person shall be eligible to such office more than eight in any period of twelve years.

SEC. 2. No person, except a citizen of the United States, shall be eligible to the office of governor, nor shall any person be eligible to that office who shall not have attained the age of thirty years, and who shall not have been three years next preceding his election a resident within this State.

SEC. 3. No member of Congress, or person holding any office under the United States or under this State, or under any other power, shall fill the office of governor, except as may be otherwise provided in this constitution.

SEC. 4. The governor shall be elected by the qualified electors of the State at the times and places of choosing members of the legislative assembly; and the returns of every election for governor shall be sealed up and transmitted to the secretary of state, directed to the speaker of the house of representatives, who shall open and publish them in the presence of both houses of the legislative assembly.

SEC. 5. The person having the highest number of votes for governor shall be elected; but in case two or more persons shall have an equal and the highest number of votes for governor, the two houses of the legislative assembly at the next regular session thereof shall forthwith, by joint vote, proceed to elect one of the said persons governor.

SEC. 6. Contested elections for governor shall be determined by the legislative assembly in such manner as may be prescribed by law.

SEC. 7. The official term of the governor shall be four years, and shall commence at such times as may be provided by this constitution, or prescribed by law.

SEC. 8. In case of the removal of the governor from office, or of

his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the secretary of state; and in case of the removal from office, death, resignation, or inability both of the governor and secretary of state, the president of the senate shall act as governor until the disability be removed or a governor be elected.

SEC. 9. The governor shall be commander-in-chief of the military and naval forces of this State, and may call out such forces to execute the laws, to suppress insurrection, or to repel invasion.

SEC. 10. He shall take care that the laws be faithfully executed.

SEC. 11. He shall, from time to time, give to the legislative assembly information touching the condition of the State, and recommend such measures as he shall judge to be expedient.

SEC. 12. He may, on extraordinary occasions, convene the legislative assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.

SEC. 13. He shall transact all necessary business with the officers of government, and may require information in writing from the officers of the administrative and military department upon any subject relating to the duties of their respective offices.

SEC. 14. He shall have power to grant reprieves, commutations, and pardons, after conviction, for all offences, except treason, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the legislative assembly at its next meeting, when the legislative assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures under such regulations as may be prescribed by law; and shall report to the legislative assembly at its next meeting each case of reprieve, commutation, or pardon granted, and the reasons for granting the same; and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted.

SEC. 15. Every bill which shall have passed the legislative assembly shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it with his objections, to that house in which it shall have originated, which house shall enter the objections at large upon the journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journal of each house, respectively; if any bill shall not be returned by the governor within five days, Sundays excepted, after it shall have been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return; in which case it shall be a law, unless the governor, within five days next after the adjournment, Sundays excepted, shall file such bill, with his objections thereto, in

the office of the secretary of state, who shall lay the same before the legislative assembly at its next session, in like manner as if it had been returned by the governor.

SEC. 16. When, during a recess of the legislative assembly, a vacancy shall happen in any office the appointment to which is vested in the legislative assembly, or when at any time a vacancy shall have occurred in any other State office, or in the office of judge of any court, the governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualified.

SEC. 17. He shall issue writs of election to fill such vacancies as may have occurred in the legislative assembly.

SEC. 18. All commissions shall issue in the name of the State; shall be signed by the governor, sealed with the seal of the State, and attested by the secretary of state.

ARTICE VI.—*Administrative Department.*

SECTION 1. There shall be elected by the qualified electors of the State, at the times and places of choosing members of the legislative assembly, a secretary and treasurer of state, who shall severally hold their offices for the term of four years; but no person shall be eligible to either of said offices more than eight in any period of twelve years.

SEC. 2. The secretary of state shall keep a fair record of the official acts of the legislative assembly and executive department of the State, and shall, when required, lay the same and all matters relative thereto before either branch of the legislative assembly. He shall be, by virtue of his office, auditor of public accounts, and shall perform such other duties as shall be assigned him by law.

SEC. 3. There shall be a seal of State, kept by the secretary of state, for official purposes, which shall be called "The seal of the State of Oregon."

SEC. 4. The power and duties of the treasurer of state shall be such as may be prescribed by law.

SEC. 5. The governor and the secretary and treasurer of state shall severally keep the public records, books, and papers, in any manner relating to their respective offices, at the seat of government, at which place also the secretary of state shall reside.

SEC. 6. There shall be elected in each county, by the qualified electors thereof, at the time of holding general elections, a county clerk, treasurer, sheriff, coroner, and surveyor, who shall severally hold their offices for the term of two years.

SEC. 7. Such other county, township, precinct, and city officers as may be necessary, shall be elected, or appointed in such manner as may be prescribed by law.

SEC. 8. No person shall be elected or appointed to a county office who shall not be an elector of the county; and all county, township, precinct, and city officers shall keep their respective offices at such places therein, and perform such duties as may be prescribed by law.

SEC. 9. Vacancies in county, township, precinct, and city offices shall be filled in such manner as may be prescribed by law.

ARTICLE VII.—*Judicial Department.*

SECTION 1. The judicial power of the State shall be vested in a supreme court, circuit courts and county courts, which shall be courts of record, having general jurisdiction, to be defined, limited, and regulated by law, in accordance with this constitution. Justices of the peace may also be invested with limited judicial powers, and municipal courts may be created to administer the regulations of incorporated towns and cities.

SEC. 2. The supreme court shall consist of four justices, to be chosen in districts by the electors thereof, who shall be citizens of the United States, and who shall have resided in the State at least three years next preceding their election, and after their election to reside in their respective districts.

The number of justices and districts may be increased, but shall not exceed five until the white population of the State shall amount to one hundred thousand, and shall never exceed seven; and the boundaries of districts may be changed, but no change of district shall have the effect to remove a judge from office, or require him to change his residence without his consent.

SEC. 3. The judges first chosen under this constitution shall allot among themselves their terms of office, so that the term of one of them shall expire in two years, one in four years, and two in six years; and thereafter one or more shall be chosen every two years, to serve for the term of six years.

SEC. 4. Every vacancy in the office of judge of the supreme court shall be filled by election for the remainder of the vacant term, unless it would expire at the next election; and until so filled, or when it would so expire, the governor shall fill the vacancy by appointment.

SEC. 5. The judge who has the shortest term to serve, or the oldest of several having such shortest term, and not holding by appointment, shall be the chief justice.

SEC. 6. The supreme court shall have jurisdiction only to revise the final decisions of the circuit courts; and every cause shall be tried, and every decision shall be made by those judges only, or a majority of them, who did not try the cause, or make the decision in the circuit court.

SEC. 7. The terms of the supreme court shall be appointed by law; but there shall be one term at the seat of government annually. And at the close of each term the judges shall file with the secretary of state concise written statements of the decisions made at that term.

SEC. 8. The circuit court shall be held twice, at least, in each year, in each county organized for judicial purposes, by one of the justices of the supreme court, at times to be appointed by law; and at such other times as may be appointed by the judges severally in pursuance of law.

SEC. 9. All judicial power, authority, and jurisdiction, not vested by this constitution, or by laws consistent therewith, exclusively in some other court, shall belong to the circuit courts; and they shall have appellate jurisdiction, and supervisory control over the county courts, and all other inferiour courts, officers, and tribunals.

SEC. 10. When the white population of the State shall amount to two hundred thousand, the legislative assembly may provide for the election of supreme and circuit judges in distinct classes, one of which classes shall consist of three justices of the supreme court, who shall not perform circuit duty; and the other class shall consist of the necessary number of circuit judges, who shall hold full terms, without allotment, and who shall take the same oath as the supreme judges.

SEC. 11. There shall be elected in each county, for the term of four years, a county judge, who shall hold the county court at times to be regulated by law.

SEC. 12. The county court shall have the jurisdiction pertaining to probate courts and boards of county commissioners, and such other powers and duties and such civil jurisdiction not exceeding the amount or value of five hundred dollars, and such criminal jurisdiction not extending to death or imprisonment in the penitentiary, as may be prescribed by law. But the legislative assembly may provide for the election of two commissioners to sit with the county judge whilst transacting county business in any or all of the counties, or may provide a separate board for transacting such business.

SEC. 13. The county judge may grant preliminary injunctions, and such other writs as the legislative assembly may authorize him to grant, returnable to the circuit court, or otherwise, as may be provided by law; and may hear and decide questions arising upon *habeas corpus*, provided such decision be not against the authority or proceedings of a court, or judge of equal or higher jurisdiction.

SEC. 14. The counties having less than ten thousand white inhabitants shall be reimbursed, wholly or in part, for the salary and expenses of the county court, by fees, per centage, and other equitable taxation of the business done in said court and in the office of the county clerk.

SEC. 15. A county clerk shall be elected in each county for the term of two years, who shall keep all the public records, books and papers of the county, record conveyances, and perform the duties of clerk of the circuit and county courts, and such other duties as may be prescribed by law; but whenever the number of voters in any county shall exceed twelve hundred, the legislative assembly may authorize the election of one person as clerk of the circuit court, one person as clerk of the county court, and one person recorder of conveyances.

SEC. 16. A sheriff shall be elected in each county for the term of two years, who shall be the ministerial officer of the circuit and county courts, and shall perform such other duties as may be prescribed by law.

SEC. 17. There shall be elected by districts, composed of one or more counties, a sufficient number of prosecuting attorneys, who shall be the law officers of the State, and of the counties within their respective districts, and shall perform such duties pertaining to the administration of law and general police as the legislative assembly may direct.

SEC. 18. The legislative assembly shall so provide that the most competent of the permanent citizens of the county shall be chosen for jurors; and out of the whole number in attendance at the court, seven

shall be drawn by lot as grand jurors, five of whom must concur to find an indictment; but the legislative assembly may modify or abolish grand juries.

SEC. 19. Public officers shall not be impeached; but incompetency, corruption, malfeasance, or delinquency in office may be tried in the same manner as criminal offences, and judgment may be given of dismissal from office, and such further punishment as may have been prescribed by law.

SEC. 20. The governor may remove from office a judge of the supreme court, or prosecuting attorney, upon the joint resolution of the legislative assembly, in which two-thirds of the members elected to each house shall concur, for incompetency, corruption, malfeasance, or delinquency in office, or other sufficient cause, stated in such resolution.

SEC. 21. Every judge of the supreme court, before entering upon the duties of his office, shall take and subscribe, and transmit to the secretary of state, the following oath:

"I, —— ——, do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of the State of Oregon, and that I will faithfully and impartially discharge the duties of a judge of the supreme and circuit courts of said State according to the best of my ability, and that I will not accept any other office except judicial offices during the term for which I have been elected."

ARTICLE VIII.—*Education and School Lands.*

SECTION 1. The governor shall be superintendent of public instruction, and his powers and duties in that capacity shall be such as may be prescribed by law; but after the term of five years from the adoption of this constitution it shall be competent for the legislative assembly to provide by law for the election of a superintendent, to provide for his compensation, and prescribe his powers and duties.

SEC. 2. The proceeds of all the lands which have been, or hereafter may be, granted to this State for educational purposes, (excepting the lands heretofore granted to aid in the establishment of a university;) all the moneys and clear proceeds of all property which may accrue to the State by escheat or forfeiture; all moneys which may be paid as exemption from military duty; the proceeds of all gifts, devises, and bequests made by any person to the State for common school purposes; the proceeds of all property granted to the State, when the purposes of such grant shall not be stated; all the proceeds of the five hundred thousand acres of land to which this State is entitled by the provisions of an act of Congress, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved the fourth of September, 1841; and also the five per centum of the net proceeds of the sales of the public lands to which this State shall become entitled on her admission into the Union, (if Congress shall assent to such appropriation of the two grants last mentioned,) shall be set apart as a separate and irreducible fund, to be called the common school fund, the interest of which, together with

all other revenues derived from the school lands mentioned in this section, shall be exclusively applied to the support and maintenance of common schools in each school district, and purchase of suitable libraries and apparatus therefor.

SEC. 3. The legislative assembly shall provide by law for the establishment of a uniform and regular system of common schools.

SEC. 4. Provision shall be made by law for the distribution of the income of the common school fund among the several counties of this State, in proportion to the number of children resident therein between the ages of four and twenty years.

SEC. 5. The governor, secretary of state, and state treasurer, shall constitute a board of commissioners for the sale of school and university lands, and for the investment of the funds arising therefrom, and their powers and duties shall be such as may be prescribed by law: *Provided*, That no part of the university funds, or of the interest arising therefrom, shall be expended until the period of ten years from the adoption of this constitution, unless the same shall be otherwise disposed of, by the consent of Congress, for common school purposes.

ARTICLE IX.—*Finance.*

SECTION 1. The legislative assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law.

SEC. 2. The legislative assembly shall provide for raising revenue sufficient to defray the expenses of the State for each fiscal year, and also a sufficient sum to pay the interest on the State debt, if there be any.

SEC. 3. No tax shall be levied, except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

SEC. 4. No money shall be drawn from the treasury but in pursuance of appropriations made by law.

SEC. 5. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the legislative assembly.

SEC. 6. Whenever the expenses of any fiscal year shall exceed the income, the legislative assembly shall provide for levying a tax for the ensuing fiscal year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expense of the ensuing fiscal year.

SEC. 7. Laws making appropriations for the salaries of public officers, and other current expenses of the State, shall contain provisions upon no other subject.

SEC. 8. All stationery required for the use of the State, shall be furnished by the lowest responsible bidder, under such regulations as may be prescribed by law; but no State officer or member of the legislative assembly shall be interested in any bid or contract for furnishing such stationery.

ARTICLE X.—*Militia.*

SECTION 1. The militia of this State shall consist of all able-bodied male citizens between the ages of eighteen and forty-five years, except such persons as now are, or hereafter may be, exempted by the laws of the United States or of this State.

SEC. 2. Persons whose religious tenets or conscientious scruples forbid them to bear arms shall not be compelled to do so in time of peace, but shall pay an equivalent for personal service.

SEC. 3. The governor shall appoint the adjutant general and the other chief officers of the general staff and his own staff, and all officers of the line shall be elected by the persons subject to military duty in their respective districts.

SEC. 4. The majors general, brigadier general, colonels, or commandants of regiments, battalions, or squadrons shall severally appoint their staff officers, and the governor shall commission all officers of the line and staff ranking as such.

SEC. 5. The legislative assembly shall fix by law the method of dividing the militia into divisions, brigades, regiments, battalions, and companies, and make all other needful rules and regulations in such manner as they may deem expedient, not incompatible with the Constitution or laws of the United States, or of the constitution of this State, and shall fix the rank of all staff officers.

ARTICLE XI.—*Corporations and Internal Improvements.*

SECTION 1. The legislative assembly shall not have the power to establish or incorporate any bank, or banking company, or moneyed institution whatever; nor shall any bank, company, or institution exist in the State, with the privilege of making, issuing, or putting in circulation any bill, check, certificate, promissory note, or other paper, or the paper of any bank, company, or person, to circulate as money.

SEC. 2. Corporations may be formed under general laws, but shall not be created by special laws, except for municipal purposes. All laws passed pursuant to this section may be altered, amended, or repealed, but not so as to impair or destroy any vested corporate rights.

SEC. 3. The stockholders of all corporations and joint stock companies shall be liable for the indebtedness of said corporation to the amount of their stock subscribed and unpaid, and no more.

SEC. 4. No person's property shall be taken by any corporation under authority of law, without compensation being first made, or secured, in such manner as may be prescribed by law.

SEC. 5. Acts of the legislative assembly, incorporating towns and cities, shall restrict their powers of taxation, borrowing money, contracting debts, and loaning their credit.

SEC. 6. The State shall not subscribe to, or be interested in, the stock of any company, association, or corporation.

SEC. 7. The legislative assembly shall not, in any manner, create any debt or liabilities which shall singly, or in the aggregate, with pre-

vious debts of liabilities, exceed the sum or fifty thousand dollars, except in cases of war, or to repel invasion, or suppress insurrection; and every contract of indebtedness entered into or assumed by or on behalf of the State, when all its liabilities and debts amount to said sum, shall be void and of no effect.

SEC. 8. The State shall never assume the debts of any county, town, city, or other corporation whatever, unless such debts shall have been created to repel invasion, suppress insurrection, or defend the State in war.

SEC. 9. No county, city, town, or other municipal corporation, by vote of its citizens or otherwise, shall become a stockholder in any joint stock company, corporation, or association whatever, or raise money for, or loan its credit to, or in aid of any such company, corporation, or association.

SEC. 10. No county shall create any debts or liabilities which shall singly, or in the aggregate, exceed the sum of five thousand dollars, except to suppress insurrection or repel invasion; but the debts of any county at the time this constitution takes effect shall be disregarded in estimating the sum to which such county is limited.

ARTICLE XII.—*State Printer.*

SECTION 1. There shall be elected by the qualified electors of the State, at the times and places of choosing members of the legislative assembly, a State printer, who shall hold his office for the term of four years.

He shall perform all the public printing for the State which may be provided by law. The rates to be paid to him for such printing shall be fixed by law, and shall neither be increased nor diminished during the term for which he shall have been elected. He shall give such security for the performance of his duties as the legislative assembly may provide.

ARTICLE XIII.—*Salaries.*

SECTION 1. The governor shall receive an annual salary of fifteen hundred dollars. The secretary of state shall receive an annual salary of fifteen hundred dollars. The treasurer of state shall receive an annual salary of eight hundred dollars. The judges of the supreme court shall each receive an annual salary of two thousand dollars. They shall receive no fees or perquisites whatever for the performance of any duties connected with their respective offices; and the compensation of officers, if not fixed by this constitution, shall be provided by law.

ARTICLE XIV.—*Seat of Government.*

SECTION 1. The legislative assembly shall not have power to establish a permanent seat of government for this State; but at the first regular session after the adoption of this constitution the legislative assembly shall provide by law for the submission to the electors of

this State, at the next general election thereafter, the matter of the selection of a place for a permanent seat of government; and no place shall ever be the seat of government under such law which shall not receive a majority of all the votes cast on the matter of such selection.

SEC. 2. No tax shall be levied or money of the State expended, or debt contracted for the erection of a State house prior to the year eighteen hundred and sixty-five.

SEC. 3. The seat of government, when established as provided in section one, shall not be removed for the term of twenty years from the time of such establishment, nor in any other manner than as provided in the first section of this article: *Provided*, That all public institutions of the State hereafter provided for by the legislative assembly shall be located at the seat of government.

ARTICLE XV.—*Miscellaneous.*

SECTION 1. All officers, except members of the legislative assembly, shall hold their offices until their successors are elected and qualified.

SEC. 2. When the duration of any office is not provided for by this constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the legislative assembly shall not create any office the tenure of which shall be longer than four years.

SEC. 3. Every person elected or appointed to any office under this constitution shall, before entering on the duties thereof, take an oath or affirmation to support the Constitution of the United States and of this State, and also an oath of office.

SEC. 4. Lotteries, and the sale of lottery tickets for any purpose whatever, are prohibited, and the legislative assembly shall prevent the same by penal laws.

SEC. 5. The property and pecuniary rights of every married woman, at the time of marriage, or afterwards, acquired by gift, devise, or inheritance, shall not be subject to the debts or contracts of the husband, and laws shall be passed providing for the registration of the wife's separate property.

SEC. 6. No county shall be reduced to an area less than four hundred square miles; nor shall any new county be established in this State containing a less area, nor unless such new county shall contain a population of at least twelve hundred inhabitants.

SEC. 7. No State officer, or member of the legislative assembly, shall, directly or indirectly, receive a fee, or be engaged as counsel, agent, or attorney in the prosecution of any claim against this State.

SEC. 8. No Chinaman, not a resident of this State at the time of the adoption of this constitution, shall ever hold any real estate or mining claim, or work any mining claim therein.

The legislative assembly shall provide by law in the most effective manner for carrying out the above provision.

ARTICLE XVI.—*Boundaries.*

In order that the boundaries of the State may be known and established, it is hereby ordained and declared that the State of Oregon shall be bounded as follows, to wit: Beginning one marine league at sea due west from the point where the forty-second parallel of north latitude intersects the same; thence northerly, at the same distance from the line of the coast, lying west and opposite the State, including all islands within the jurisdiction of the United States, to a point due west and opposite the middle of the north ship channel of the Columbia river; thence easterly, to and up the middle channel of said river, and, where it is divided by islands, up the middle of the widest channel thereof, and, in like manner, up the middle of the main channel of Snake river, to the mouth of the Owyhee river; thence due south, to the parallel of latitude forty-two degrees north; thence west, along said parallel, to the place of beginning, including jurisdiction in civil and criminal cases upon the Columbia river and Snake river, concurrently with States and Territories of which those rivers form a boundary in common with this State. But the Congress of the United States, in providing for the admission of this State into the Union, may make the said northern boundary conform to the act creating the Terrritory of Washington.

ARTICLE XVII.—*Amendments.*

SECTION 1. Any amendment or amendments to this constitution may be proposed in either branch of the legislative assembly, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and referred to the legislative assembly to be chosen at the next general election; and if, in the legislative assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislative assembly to submit such amendment or amendments to the electors of the State, and cause the same to be published without delay at least four consecutive weeks in the several newspapers published in this State; and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this constitution.

SEC. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for, or against, each of such amendments separately; and while an amendment or amendments, which shall have been agreed upon by one legislative assembly, shall be awaiting the action of a legislative assembly, or of the electors, no additional amendment or amendments shall be proposed.

ARTICLE XVIII.—*Schedule.*

SECTION 1. For the purpose of taking the vote of the electors of the State for the acceptance or rejection of this constitution, an election

shall be held on the second Monday of November, in the year 1857, to be conducted according to existing laws regulating the election of delegate in Congress, so far as applicable, except as herein otherwise provided.

SEC. 2. Each elector who offers to vote upon this constitution shall be asked by the judges of election this question:

Do you vote for the constitution—yes or no?

And also this question:

Do you vote for slavery in Oregon—yes or no?

And also this question:

Do you vote for free negroes in Oregon—yes or no?

And in the poll-books shall be columns headed, respectively, "Constitution, yes;" "Constitution, no;" "Slavery, yes;" "Slavery, no;" "Free negroes, yes;" "Free negroes, no." And the names of electors shall be entered in the poll-books, together with their answers to the said questions, under their appropriate heads. The abstracts of the votes transmitted to the secretary of the Territory shall be publicly opened, and canvassed by the governor and secretary, or by either of them, in the absence of the other; and the governor, or, in his absence, the secretary, shall forthwith issue his proclamation, and publish the same in the several newspapers printed in this State, declaring the result of the said election upon each of said questions.

SEC. 3. If a majority of all the votes given for and against the constitution shall be given for the constitution, then this constitution shall be deemed to be approved and accepted by the electors of the State, and shall take effect accordingly; and if a majority of such votes shall be given against the constitution, then this constitution shall be deemed to be rejected by the electors of the State, and shall be void.

SEC. 4. If this constitution shall be accepted by the electors, and a majority of all the votes given for and against slavery shall be given for slavery, then the following section shall be added to the bill of rights, and shall be part of this constitution:

"SECTION —. Persons lawfully held as slaves in any State, Territory, or district of the United States, under the laws thereof, may be brought into this State, and such slaves, and their descendants, may be held as slaves within this State, and shall not be emancipated without the consent of their owners."

And if a majority of such votes shall be given against slavery, then the foregoing shall not, but the following section shall be added to the "bill of rights," and shall be a part of this constitution:

"SEC. —. There shall be neither slavery nor involuntary servitude in this State, otherwise than as a punishment for crime, whereof the party shall have been duly convicted."

And if a majority of all the votes given for and against free negroes shall be given against free negroes, then the following section shall be added to the bill of rights, and shall be part of this constitution:

"SEC. —. No free negro or mulatto, not residing in this State at the time of the adoption of this constitution, shall ever come, reside, or be within this State, or hold any real estate, or make any contract, or maintain any suit therein; and the legislative assembly shall

provide by penal laws for the removal by public officers of all such free negroes and mulattoes, and for their effectual exclusion from the State, and for the punishment of persons who shall bring them into the State, or employ or harbor them therein."

SEC. 5. Until an enumeration of the white inhabitants of the State shall be made, and the senators and representatives apportioned as directed in this constitution, the county of Marion shall have two senators and four representatives; Linn two senators and four representatives; Lane two senators and three representatives; Clackamas and Wasco one senator jointly, and Clackamas three representatives, and Wasco one representative; Yamhill one senator and two representatives; Polk one senator and two representatives; Benton one senator and two representatives; Multnomah one senator and two representatives; Washington, Columbia, Clatsop, and Tillamook one senator jointly, and Washington one representative, and Washington and Columbia one representative jointly, and Clatsop and Tillamook one representative jointly; Douglas one senator and two representatives; Jackson one senator and three representatives; Josephine one senator and one representative; Umpqua, Coos, and Curry one representative jointly.

SEC. 6. If this constitution shall be ratified, an election shall be held on the first Monday of June, 1858, for the election of members of the legislative assembly, a representative in Congress, and State and county officers; and the legislative assembly shall convene at the capitol the first Monday of July, 1858, and proceed to elect two senators in Congress, and make such further provisions as may be necessary to the complete organization of a State government.

SEC. 7. All laws in force in the Territory of Oregon when the constitution takes effect, and consistent therewith, shall continue in force until altered or repealed.

SEC. 8. All officers of the Territory, or under its laws, when this constitution takes effect, shall continue in office until superseded by the State authorities.

SEC. 9. Crimes and misdemeanors committed against the Territory of Oregon shall be punished by the State, as they might have been punished by the Territory if the change of government had not been made.

SEC. 10. All property and rights of the Territory, and of the several counties, sub-divisions, and political bodies corporate of or in the Territory, including fines, penalties forfeitures, debts, and claims of whatsoever nature, and recognizance or obligations, and undertakings to or for the use of the Territory, or any county, political corporation, officer, or otherwise, to or for the public, shall inure to the State, or remain to the county, local division, corporation, officer, or public, as if the change of government had not been made. And private rights shall not be affected by such change.

SEC. 11. Until otherwise provided by law, the judicial districts of the State shall be constituted as follows: The counties of Jackson, Josephine, and Douglas, shall constitute the first district. The counties of Umpqua, Coose and Curry, Lane and Benton, shall contitute the second district. The counties of Linn, Marion, Polk

Yamhill, and Washington, shall constitute the third district. The counties of Clackamas, Multnomah, Wasco, Columbia, Clatsop, and Tillamook, shall constitute the fourth district; and the county of Tillamook shall be attached to the county of Clatsop for judicial purposes.

Done in convention, at Salem, the eighteenth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

M. P. DEADY, *President.*

CHESTER N. TERRY, *Secretary.*
M. C. BARKWELL, *Assistant Secretary.*

Solomon Fitzhugh	John W. Watts
Nathaniel Robbins	P. B. Marple
S. J. McCormick	A. D. Babcock
Paul Brattain	Richard Miller
Isaac R. Moores	F. Waymire
Reuben S. Coyle	Joseph Cox
Enoch Hoult	Delazon Smith
William Matzger	Thomas J. Dryer
William A Starkweather	John T. Crooks
Jesse Cox	William H. Packwood
J. H. Brattain	Levi Anderson
L. J. C. Duncan.	John Kelsey
P. P. Prim	Robert C. Kinney
A. L. Lovejoy	James Shields
James K. Kelly	John S. White
David Logan	George H. Williams
Benjamin F. Burch	William H. Farrar
Thomas Whitted	Stephen F. Chadwick
R. V. Short	John R. McBride
Daniel Newcomb	W. W. Bristow
Luther Elkins	Nicholas Shrum
Lafayette Grover	Henry B. Nicholas
Davis Shannon	John C. Peebles
Sidney B. Hendershot	A. J. Campbell

Reuben P. Boise.

TERRITORY OF OREGON, *ss:*

I, B. F. Harding, secretary of the Territory of Oregon, do hereby certify that the foregoing is a true copy of the preamble, constitution, and schedule adopted by the people of Oregon, on the 9th day of November, 1857, and now on file and remaining of record in my office by authority of a resolution of the convention of delegates which passed the same.

In testimony whereof, I have hereunto signed my name, and affixed the seal of the Territory, at Salem, this 14th day of December, A. D. 1857.

[L. S.]

B. F. HARDING,
Secretary of Oregon Territory.

BY THE GOVERNOR OF OREGON.

A PROCLAMATION.

Whereas the people of the Territory of Oregon, through their delegates in convention assembled, prepared a constitution for their government under a State organization, and submitted the same, with certain propositions, to be approved and determined at an election which was held in the said Territory on the 9th day of November, A. D. 1857, in conformity to the provisions made by said convention of delegates; and

Whereas it was further provided by said convention of delegates that the result of said election should be announced by executive proclamation: Therefore, to that end, it is hereby declared and made known, that at the said election, held on the 9th day of November, A. D. 1857, there were seven thousand one hundred and ninety-five votes given for the adoption of the said constitution, and three thousand one hundred and ninety-five votes against its adoption. There were two thousand six hundred and forty-five votes given in favor of slavery, and seven thousand seven hundred and twenty-seven votes against slavery; and there were given one thousand and eighty-one votes in favor of permitting the residence of free negroes, and eight thousand six hundred and forty votes against the same.

In testimony whereof, I have hereunto set my official signature, and caused the seal of the Territory to be affixed, at Salem, this [L. S.] 14th day of December, A. D. 1857.

By the governor:

GEORGE L. CURRY.
B. F. HARDING,
Secretary of Oregon Territory.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 227.

MEMORIAL

OF THE

MAGNETIC TELEGRAPH COMPANY AND OF THE NEW ENGLAND UNION TELEGRAPH COMPANY,

PRAYING

The enactment of a law which will prevent combinations between citizens or companies in the United States and monopolists or companies out of the United States for the purpose of oppressing telegraph companies and monopolizing the business of telegraphing in the United States, and will enable all telegraph lines in the United States to form connexions with all telegraph lines approaching their borders on terms of perfect equality.

MARCH 31, 1858.—Referred to the Committee on the Judiciary. Motion to print referred to the Committee on Printing.
APRIL 7, 1858.—Report in favor of printing submitted, considered, and agreed to.

MEMORIAL.

To the Senate and House of Representatives of the United States of America in Congress assembled:

The memorial of the Magnetic Telegraph Company and the New England Union Telegraph Company, by their joint committee duly authorized, respectfully represents: That the Magnetic Telegraph Company, whose line of telegraph extends from Washington to New York, was the first telegraph company organized in the United States to give practical effect to Professor Morse's invention of the American electro-magnetic telegraph, now pervading the civilized world, and was soon after followed by the organization of the New York and Boston Magnetic Telegraph Association, which, having been united with a competing line on substantially the same route, is now known by the name of the New England Union Telegraph Company.

The Magnetic Telegraph Company has since, by lease, obtained control of the Washington and New Orleans line, so that they now possess the line along the Atlantic coast from New York to New Orleans.

Upon these companies devolved the necessity of solving many problems in relation to long lines of electric telegraph which had hitherto been involved in doubt and could only be solved by expensive experiments. Scarcely, however, had they begun to receive a return

for their investments, when rival lines sprung up, under different systems of telegraphing, which the two companies believed to be infringements of Morse's patent, for the use of which they had given half their stock. Expensive litigation was the consequence; from which, however, no effective protection was obtained, on account of the defective character of the patent laws and the conflicting principles applied to their construction by the judicial tribunals.

Nevertheless, your memorialists would have been content to carry on their business with the imperfect protection which the existing laws afford them, without an appeal to Congress for further legislation, had they been left to contend only with infringers of their patented rights, or even with a full and fair domestic competition. But your memorialists represent and charge, that a combination has been entered into by parties and companies in and out of the United States, endeavoring to force the companies represented by the undersigned to surrender their property into the hands of such combination on their own terms, or of destroying its value altogether. And your memorialists charge that this combination, through concealment of its ultimate objects, and through representations and pledges of some of its active managers, prevented your memorialists from taking steps to protect their interests, while the said combination were procuring the aid of the British province of Newfoundland, the government of Great Britain, and the government of the United States.

Your memorialists desire to be understood as not opposed to the great enterprise of connecting Europe and America by a telegraphic cable, nor to any assistance in ships or money which their government may think proper to give it; but they maintain that it is the duty of their government, whether they assist the enterprise or not, to see that it shall not be used to oppress one interest in the United States for the purpose of building up another, and that this duty becomes more imperative when the government furnishes it with material aid.

Your memorialists further represent, that the combination of which they complain is composed of the New York, Newfoundland and London Telegraph Company, incorporated by the legislature of the British province of Newfoundland; the American Telegraph Company, incorporated under the laws of the State of New York; and the Atlantic Telegraph Company, a British corporation, embracing an Atlantic telegraphic cable from Newfoundland to the coast of Ireland. Whether there is a fourth party covering a telegraph line from the Irish terminus of the proposed Atlantic cable to the city of London, your memorialists are not advised, nor is it material.

Your memorialists represent, that the three telegraph companies aforesaid originated with certain capitalists in the city of New York, who are stockholders in all of them, and control two of them directly and absolutely, and the third indirectly but effectually. The New York, Newfoundland and London Telegraph Company, and the American Telegraph Company, are composed mainly of the same men, and are under the same control; and the same men who control them are influential stockholders in the Atlantic Telegraph Company, which could not have existed in its present shape without their consent. In fact, the Atlantic Telegraph Company and the American Telegraph Company were but parts of one scheme, which was originally embraced in

the act incorporating the New York, Newfoundland, and London Telegraph Company, and in interest and control they are still parts of one scheme, insomuch that the success of one contributes, if it be not absolutely essential, to the success of all; and any aid afforded by the government giving strength to one, gives strength and power to all.

That these three companies are one in origin and design is conclusively shown by the act of the legislature of Newfoundland incorporating the New York, Newfoundland, and London Telegraph Company, passed April 15, 1854. The 14th and 18th sections of that act are in the following words, viz:

"14. The corporation hereby created shall have the sole and exclusive right to build, make, occupy, take or work the said line or any line of telegraph between Saint John's and Cape Ray, or between any other points in this island, (excepting only the existing line between Saint John's and Carbonear,) for the full period of fifty years from the passing of this act, subject, nevertheless, to the right of preemption by the government of this colony, as hereinafter provided; and during the said period of fifty years, no other person or persons, body or bodies politic or corporate, shall be permitted to construct, purchase, take or operate any line or lines of telegraph on this island, or to extend to, enter upon, or touch any part of this island, or the coast thereof, or of the islands or places within the jurisdiction of the government of this colony, with any telegraphic cable, wire, or other means of telegraphic communication, from any other island, country, or place whatsoever: *Provided, however*, That if said line of telegraph shall not have been completed from Saint John's to Cape Ray, or other point on the western coast of Newfoundland, and a communication by telegraph across Prince Edward's island, or the Island of Cape Breton or otherwise, established with the continent of America within five years from the passing of this act, the exclusive privileges granted by this section shall cease."

"18. The said company shall have power to establish, construct, and work a line or lines of telegraph between Newfoundland and Ireland, or any other island, place, or places in the Atlantic ocean, or in Europe, or in the United States, and to construct, purchase, and work any telegraph line or lines, or means of communication in Canada, Prince Edward's island, Cape Breton, Nova Scotia, New Brunswick, and the United States, and in the waters adjacent to or between the said islands, provinces or States, and between any of them and Newfoundland: *Provided, however*, That such consent as may be necessary shall be first obtained of the governments of said provinces and States, respectively; and generally to purchase or hire any line of telegraph which may now or hereafter be constructed by any person or persons, or body or bodies politic or corporate, in the United States, or British provinces of North America, or in Europe, and to use the same for the transmission of messages and intelligence; and they may also construct, purchase, hire, or use any steam or other vessels to aid in the acquisition or transmission of intelligence between America and Europe, or in carrying on any of the operations of the said company."

The 14th section, it will be perceived, confers on the company an absolute monoply for fifty years, of landing a telegraphic cable on the

coasts of Newfoundland, and the 18th section confers on them the power to establish and work a line of telegraph "between Newfoundland and Ireland," the precise enterprise now in course of execution with the aid of government by the Atlantic Telegraph Company. If the latter company, therefore, have any right to land a telegraphic cable on the coast of Newfoundland, it must have been derived from the Newfoundland company, to whom the grant was originally made.

It will also be perceived that the 18th section confers on the company the power to construct, purchase, hire and work telegraph lines in the United States as well as in the British provinces. This power has not been exercised in the United States in the name of the Newfoundland company; but the *same men* who control that company have organized themselves into another company called the American Telegraph Company, who are, in connexion with the Newfoundland and ocean companies, carrying into effect the American branch of the original scheme.

Here, then, we have three telegraph companies carved out of one. The object is the same, but the responsibilities are divided. The principal managers are virtually, if not identically, the same; but they now act through three organizations instead of one. These managers are the principal stockholders of the Newfoundland and American Telegraph Companies, heavy stockholders in the Atlantic Telegraph Company, and are the originators of the whole scheme.

If further evidence were needed to prove a community of interest between these three companies, it is found in the recent proceedings of the Atlantic Telegraph Company in England, constituting some of the principal stockholders of the American company, who are also stockholders of the Newfoundland company, honorary directors of the Atlantic company.

If any doubt could exist as to the ultimate object of this scheme, it is solved by the efforts of its authors to hedge round the continent and the islands of America, so as to render impracticable competition with them by other telegraph lines across the Atlantic ocean, and even to extend their monopoly into the United States.

Their Newfoundland monopoly is as exclusive as language can make it. No other company or individual is permitted to "*touch*" the shores of that island by a telegraph line of any sort. If, as has been represented, that is the only point where the ocean can be crossed by a telegraphic cable, that grant is of itself a bar to every other enterprise of the same sort. But lest it should be found practicable to land a telegraphic cable at some point further west, the managers of the Newfoundland monopoly sought to cut off the possibility of a rival line by the extension of their monopoly to the coasts of the other British provinces and the United States.

They sought, and claim to have secured, the exclusive right of landing a telegraphic cable in the province of Nova Scotia.

They sought, and actually procured, from the legislature of the State of Maine, an act prohibiting all other parties from laying a submarine cable from any foreign country touching the coasts of that State for twenty-five years. The title of this act, and the prohibitory clause, are in the following words, viz:

"AN ACT granting certain privileges to the New York, Newfoundland and London Telegraph Company.

"SEC. 1. For and during the term of twenty-five years from and after the time when the New York, Newfoundland and London Telegraph Company, incorporated by the legislature of Newfoundland for the purpose, among others, of establishing a line of telegraphic communication between America and Europe, by way of Newfoundland, shall have established, with or without the aid of an associated line or lines, a telegraphic communication between America and Europe, and so long during said twenty-five years as such communication shall be regularly maintained by said company, and all matters passing thereon for the United States be transmitted through the State of Maine upon the lines of the American Telegraph Company, as lessees of the Maine Telegraph Company, no other person or persons, body or bodies politic or corporate, shall be permitted to extend to, enter upon, or touch any part of the State of Maine, or the coasts thereof, or of the islands under its jurisdiction, with any telegraphic cable, wire or other means of telegraphic communication from any other province, State, county, [country?] or place whatsoever beyond the continent of America."

This act was approved April 10, 1856. It does not, as the title erroneously represents, *grant any privilege* to the New York, Newfoundland and London Telegraph Company, but merely *prohibits any other party* from landing a transatlantic telegraph cable in the State of Maine. And this prohibition is equally for the benefit of that company and of the American Telegraph Company, for whom it purports to secure a monopoly of the foreign telegraphic correspondence through the State of Maine. Indeed, nothing could show more strongly than the procurement of this act the identity of interest and management of the American and Newfoundland companies.

A zealous effort was made to secure similar legislation in Massachusetts, but without success.

Without adverting to rumors of similar operations elsewhere, these instances are abundantly sufficient to show the design of these parties to hedge round the continent of America by exclusive grants and prohibitions, so that the United States should be unapproachable telegraphically otherwise than through their line from the coast of Ireland, and through the Newfoundland and American lines chiefly owned by them or under their control; and this monopoly they are endeavoring to extend practically through the several States.

Your memorialists further represent, that the aid of the governments of Newfoundland, of Great Britain, and of the United States, has been sought and obtained to establish this monopoly on a basis which shall forbid all attempts to get up competition.

The government of Newfoundland, in addition to the monopoly of fifty years' duration, gave the company about twenty-five thousand dollars in cash for clearing a bridle-path necessary to the construction and repairs of their line of telegraph, guaranteed six per cent. interest on about two hundred and fifty thousand dollars of bonds issued by them, and granted them fifty square miles of public lands when the line

on the island should be completed and connected with the lines on the continent, and fifty square miles more when the communication with the coast of Ireland shall be established. These grants were made, it will be remembered, to a company which embraced in its plan the building and hiring of lines in the United States and laying a telegraphic cable to the coast of Ireland; and the grant of fifty square miles of the land is expressly in consideration of the successful accomplishment of the latter enterprise. But whether the right to the lands as well as the enterprise has been transferred to the Atlantic Telegraph Company is to your memorialists unknown, though they have reason to believe it has not; nor do they know how or by what authority the ocean part of the original scheme has been severed from the Newfoundland company, and vested in another company, though they do not doubt it was a measure projected and matured by the chief managers of the original company.

Your memorialists further represent, that the plan of a transatlantic telegraph, though perhaps originally projected as a noble enterprise, in which its promoters expected to receive their chief recompense in the glory of success and the gratitude of nations, has been since converted into an enormous scheme of monopoly, aiming to control the telegraph business of the two hemispheres for the purpose of securing, directly and indirectly, inordinate gains to a few individuals. The facts of the case, in their estimation, warrant this conclusion.

Your memorialists have already shown that this measure is but a part of a more extensive operation from which it has been nominally severed, though still as effectually united in interest as if it still remained under the direct control of the Newfoundland company. As a separate concern, the stock of the Atlantic Telegraph Company was raised, at least in part, upon the representations of a circular marked ("private.") The amount of stock was fixed at £300,000, since increased to £350,000, equal to about $1,700,000.

That circular represented that "upon a very moderate computation of profits, the capital will yield a return exceeding 40 per cent."

These profits are not to be divided among all the stockholders in the ordinary way; but one-half of the amount over ten per cent. is to go to four individuals, three of them British subjects, and one of them a citizen of the United States.

That citizen is the gentleman who procured the act of the legislature of Newfoundland incorporating the New York, Newfoundland and London Telegraph Company; the same who got up the American Telegraph Company; the same who doubtless originated the present plan of the Atlantic Telegraph Company; and the same who is now said to be entrusted with the duty of superintending the laying of the Atlantic cable.

Of the one-half of the profits over ten per cent. this gentleman is to receive *thirteen parts* out of *twenty-four*, which, if the estimate of profits as held out to subscribers shall be realized, will give him an annual income exceeding $120,000, in addition to twenty-five per cent. upon his stock in common with other stockholders.

As this estimate was promulgated before application was made to Congress for assistance, and there was no mention of any bounty from the

British government, it would seem that the eight per cent. per annum said to be secured from the two governments for a term of years was not included in the forty per cent. estimate, and while four per cent. of it is to go to swell the dividends of the stockholders beyond twenty-five per cent., the other four is to be divided—thirteen parts to the American citizen, and eleven parts to the British subjects hereinbefore alluded to.

As no interest in the fifty square miles of land appropriated by the legislature of Newfoundland, to encourage the laying of the telegraphic cable, is mentioned as vested in the Atlantic company, it is presumed that the New York, Newfoundland and London company purpose retaining the bounty, while they transfer to another company the service for which it was provided. But if the fifty square miles of land is to go to the Atlantic Telegraph Company, it will swell the enormous profits anticipated from other sources beyond the foregoing estimate.

Your memorialists further represent, that the instrument through which this combination, backed by the direct aid, influence, and money of the three governments, seeks to force the New England Union and magnetic lines of telegraph into connexion with them on their own terms, under penalty of the destruction of their property in case of refusal, is the American Telegraph Company. This company covers a field of operations, as already shown, which was embraced in the Newfoundland act of incorporation. It was gotten up by the same men who control the New York, Newfoundland and London Telegraph Company. Both companies have the same president, are composed mainly of the same stockholders, and are under the same control.

The objects of this separation have been substantially avowed. If the original project had been prosecuted under the Newfoundland act of incorporation, the State and federal governments would have had direct control over that corporate body by operating upon the American branch of their enterprise, and that control would have reached the submarine electric cable. But by cutting off the American branch of the original scheme, and confining the operations of the Newfoundland company to the British provinces, that company, as well as its other branch, the Atlantic company, are placed beyond the reach of the direct legislation of the United States and of the several States through which their connecting lines may pass. And the avowed object of the chief proprietors and principal managers of the Newfoundland and American companies—being, in the main, the same men, and all or nearly all citizens of the United States—is to bar all telegraph lines in these States, except such as may be owned, controlled, or in league with them, from connexion with the Atlantic cable by means of operations carried on by them in part beyond the jurisdiction of their own government, and in part by special grants and prohibitions procured from State legislatures, as shown in the act of the State of Maine.

Your memorialists charge that, backed by the Newfoundland monopoly, and an anticipated exclusive connexion through that monopoly with the Atlantic cable, the authors and managers of the combined operation have attempted to bring the principal lines in the United

States under their control upon their own terms, and, not succeeding in relation to the lines represented by your memorialists, are now employing the power thus acquired, strengthened by domestic combinations and the bounty of the government, to destroy the business of said lines and render them valueless, not only by cutting them off from all connexion with the Atlantic cable, but by getting up rival lines in the United States and making them the exclusive recipients of European telegraphic correspondence.

A brief history of the origin and progress of the American Telegraph Company is necessary to a clear understanding of the present position of the subject and the object of this memorial.

After the Newfoundland company was formed, its managers and most of its stockholders, as already stated, organized themselves into another company, with a nominal capital of $100,000, (since increased to $200,000,) and assuming the name of the American Telegraph Company became a corporation under the laws of New York.

Their first step was to make proposals to lease the existing Morse lines on the Atlantic coast, from the British provinces to New Orleans, and from New York to Buffalo, for an annual rent in general below their current income. The several companies were much inclined to accede to these proposals, though there were well-grounded objections in the small capital of the new company to the security for the rents; but before they had time to consider and act upon the proposals, the American company suddenly withdrew them.

The next step of the American company was to purchase a new and untried telegraph instrument; and while they were spending hundreds and thousands of dollars upon it to make it of any use, they silently allowed the agent of the Associated Press, of or through whom they had made the purchase, to fill the country with misrepresentations in relation to its powers and performances, and to announce their purpose to establish new lines of telegraph along the principal commercial routes in the United States, in competition with the existing lines.

When these publications, suffered to pass by them without contradiction, had circulated long enough to thoroughly alarm the stockholders of existing lines, the American company came forward with a new set of proposals to rent them on terms much reduced below those which they had withdrawn. Convinced that the policy of the American company was to force them into a surrender of their property through fear of destruction in case of refusal, the companies addressed, with a natural repugnance to such a system of coercion, rejected these new proposals.

In the meantime the American company rented the Maine line, taking into their service the president and superintendent of that line, thereby effecting a connexion between the city of Boston and the British provinces.

Not succeeding in securing, by lease, control of any considerable line south of Boston, the American company purchased an existing line between that city and New York, and entered into competition with the New England Union line between those cities. This was the condition of telegraph matters, as between the American company

and the companies represented by your memorialists, when the Atlantic Telegraph Company made application to Congress for the aid and bounty of the government.

The community of interests between that company and the American company is proved by the fact that this application was made through the president and principal stockholders of the latter company, who visited and spent much time in Washington to promote the passage of the bill.

Your memorialists further represent, that some of the stockholders of the Magnetic Telegraph Company, apprehensive that the power which, in anticipation, was already used against them, and might hereafter be used against the commercial and political interests of their country, would be greatly strengthened, should Congress accede to this application, interposed to prevent its success, and for a time its fate became doubtful.

Your memorialists charge, and are prepared to prove, that, in this emergency, the principal manager of the application on the part of the Atlantic company, who is also one of the chief managers of the American and Newfoundland companies, and a large stockholder in all three of them, accompanied by a British stockholder in the Atlantic company, called on some of the most influential stockholders of the magnetic company, and, by pledges that the Atlantic cable should not be so managed as to affect injuriously the interests of the magnetic company, prevented the interposition of the said stockholders in opposition to the passage of the bill then before Congress. And they further charge that within less than four months thereafter, in anticipation of the immediate successful laying of the Atlantic cable, these pledges were falsified by one of the men who made them, and his associates in the American company, who entered into arrangements, the palpable object of which is to use the power anticipated from the absolute control by their three combined companies over the transatlantic correspondence, for the injury, and, if practicable, the destruction of the lines owned and controlled by the Magnetic Telegraph Company, as well as those owned and controlled by the New England Union Telegraph Company. These arrangements were made secretly, during the pendency of negotiations, with a view of securing to the magnetic company that position in relation to the Atlantic cable which had been pledged to them at Washington, as well as to put an end to telegraphic warfare. And in pursuance of those arrangements, the American company have established a line from New York to Philadelphia, and avow a design to extend it further south, for the purpose, not only of monopolizing the European correspondence, but depriving the magnetic company of its local business.

Your memorialists further represent, that the arrangements thus secretly entered into were afterwards publicly ratified, and that they provide in effect for cutting off the companies represented by your memorialists for thirty years from business reaching the continent of America by the Atlantic cable; and to make the exclusion more effective, they contemplate the extension of the American lines along the Atlantic coast south to New Orleans. Finding their very existence thus threatened, the Magnetic and New England Union companies combined

together for mutual defence for a like term of thirty years, and made contracts of the same duration for connexions with other lines. It soon became evident that the American company and their allies, foreign and domestic, were not to destroy the Magnetic and New England Union lines without a severe and expensive struggle, when that company indicated a willingness to amalgamate the three companies. While some of the stockholders of the two former companies were willing to attempt a removal of the obstacles which had been created by contracts on both sides for exclusive connexions for thirty years, others thought the attempt useless, and for that and other reasons the project was not entertained.

Your memorialists further represent, that by a contract of the Maine Telegraph Company, entered into before the lease of their line to the American Telegraph Company, the Maine line of telegraph was bound to a perpetual connexion with the New England Union company at Boston, to the extent of returning that company as much business from the east as they might receive by it from the west, and this contract, at the time of the lease, the American company became bound to fulfil in good faith. But since they purchased a line for their own use from Boston to New York, they have, under various pretexts, refused to fulfil this contract so far as it relates to business from beyond Portland, thus cutting off the New England Union line and its connexions from all business coming from points east of that city in the United States, in the British provinces, and from Europe, through the Atlantic cable.

Your memorialists further represent, that the act of Congress, approved March 3, 1857, "to expedite telegraphic communication for the uses of the government in its foreign intercourse," provides for a contract "with any competent person, persons or association," for the aid of the government in laying the submarine cable and for its use, paying therefor $70,000 per year until the net income of said parties shall be six per cent., and afterwards $50,000 per annum for twenty-five years. As the persons constituting the New York, Newfoundland and London Telegraph Company have the exclusive right of landing a telegraph cable on the coast of Newfoundland, and those persons are, in the main, the same who constitute the American Telegraph Company, it is evident that this liberal grant is for the benefit of the individuals composing the latter company as much as the former. If the Newfoundland company have ceded their exclusive right to the Atlantic company, it is not likely to have been done without a consideration, of which a part would accrue to the principal stockholders in the American company; and in any event the bounty of the government will go to strengthen each of the combined companies through those individuals who are heavy stockholders in them all. But if the profits of the Atlantic company shall equal even less than one-half of the estimate of its projectors, then thirteen dollars out of forty eight of the government appropriations, both of Great Britain and the United States, will accrue to a citizen of New York, who is believed to be financially the projector of the whole scheme, and is notoriously the life and soul of each and all of the three companies which compose it.

Your memorialists are not disposed to complain of anything their

government may be inclined to do in promoting or rewarding this great enterprise; all that they desire and ask is, that the parties thus strengthened and enriched shall not be permitted to exercise the power thus acquired for the oppression and destruction of the companies which they represent; and the foregoing detail of facts has been given merely to show the extent of that power and the use which is already made of it.

The act of Congress above alluded to contains the following proviso, viz:

"*Provided, further,* That the United States, and the citizens thereof, shall enjoy the use of said submarine communication for all time on the same terms and conditions which shall be stipulated in favor of the government of Great Britain, and the subjects thereof, recognizing equality of rights among the citizens of the United States in the use of the said submarine communication, and the lines of telegraph which may at any time connect with the same at its terminus on the coast of Newfoundland and in the United States, in any contract so to be entered into by such person, persons or association with that government."

Your memorialists are already admonished that the "equality of rights," seemingly provided for in this proviso, is, so far as their companies are concerned, wholly illusory.

No line, other than that of the Newfoundland company, *can* connect with the submarine cable, on account of their monopoly.

No line but that of the American company *can* connect with the Newfoundland line, because both virtually belong to and are managed by the same men.

Members of the American company have already denied the right of any other telegraph lines to insist on a reciprocal connexion with the submarine cable through the Newfoundland and their own lines for the purpose of sending and receiving intercontinental messages, claiming that privilege as a portion of their own property. And by this exclusive connexion, as well as by the legislation of the State of Maine, the managers of the scheme virtually extend their Newfoundland monopoly through the British provinces and into the United States; for, though messages going to Europe may be delivered to them at any of their stations in the United States, all messages from Europe to any of their stations, or stations of parties in alliance with them, will be sent to their own lines, the practical effect of which will soon be to make the lines of the American company in the United States the exclusive channels of European telegraphic correspondence.

But if the "equality of rights," mentioned in the proviso, includes a right of telegraph lines in the United States to a reciprocal connexion with the submarine cable through connecting lines for business both ways, it is a right depending on a contract to which the American and Newfoundland companies are not proposed to be parties, and of course it will impose upon them no obligation. And the Atlantic company is in no shape bound to secure access to its own terminus, and, if it were, could be held responsible, as the matter now stands, only by the withdrawal of the future bounty of the government.

Your memorialists neither ask nor desire the interposition of Congress to protect them against competition in the United States. They neither ask nor desire the withdrawal of the aid of the government from the Atlantic Telegraph Company, or its refusal to any other company which may be organized to span the ocean with a line of telegraph. All they ask is, to be protected against combinations for the purpose of oppressing or destroying them between parties operating in the United States and out of the United States, and to be put on an equal footing with all others in their connexion with foreign lines entering the United States by sea or land.

This protection, your memorialists are advised, it is the province of Congress to afford them, by virtue of their constitutional power to regulate trade and intercourse with foreign nations. And they appeal the more confidently for this protection on account of the aid granted by Congress to the combination against them, increasing their power to oppress.

Your memorialists, therefore, pray for the passage of a general law which shall prevent combinations between citizens or companies in the United States, and monopolists or companies out of the United States, for the purpose of oppressing telegraph companies and monopolizing the business of telegraphing in the United States, and shall enable all telegraph lines in the United States to form connexions with all telegraph lines approaching their borders on terms of perfect equality.

Your memorialists are the more emboldened to present this prayer, from the consideration that the monopoly of telegraphic intercourse between, if not throughout the Old and New Worlds, now sought to be established, may be applied with fearful effect to the commercial and political as well as telegraphic interests of the United States, unless regulated by law.

AMOS KENDALL,
ZENUS BARNUM,
SAM. C. BISHOP,
Committee of the Magnetic Telegraph Company.

FRANCIS O. J. SMITH,
H. M. SCHIEFFELIN,
Committee of the New England Union Telegraph Company.

[SUPPLEMENT.]

To the Senate and House of Representatives of the United States:

A supplement to the memorial of the Magnetic Telegraph Company and the New England Union Telegraph Company respectfully represents:

That since the memorial to which this is supplementary was prepared, sundry publications of the Atlantic Telegraph Company in England have been received, which show some modification of their original arrangements, and tend to confirm the material statements made in said memorial.

The capital of the company has been increased to £500,000.

The reputed projectors of the scheme have commuted their right to half the net income over ten per cent. for £75,000 in the stock of the company.

A publication, of which the following is a copy, has been recently issued by their secretary.

"*Summary of privileges accorded for encouraging the completion of the Atlantic telegraph.*

"1st. Exclusive right for fifty years to land telegraphic cables on the Atlantic coast and shores of Labrador.

"2d. The same right for fifty years on the shores and coast of the island of Newfoundland.

"3d. The same right for fifty years on the shores and coast of Prince Edward's island.

"4th. The same right for twenty-five years on the shores and coast of Nova Scotia.

"5th. The same right for twenty-five years on the shores and coast of Cape Breton.

"6th. The same right for twenty-five years on the shores and coast of the State of Maine, United States.

"7th. Guarantee from the British government of £14,000 per annum until the company's net profits equal six per cent., in which latter case the amount absolutely payable is to be reduced to £10,000 per annum for twenty-five years.

"8th. A similar guarantee from the United States government, making, with the English subsidy, a minimum annual allowance of £20,000.

"9th. Steamers from the British government, free of charge, for the laying of the cable during the present year.

"10th. The same from the United States government.

"11th. Exclusive traffic arrangements over forty thousand miles of existing telegraph lines in the United States and British North America.

"GEORGE SAWARD, *Secretary.*

"OFFICES 22 OLD BROAD STREET, *London.*"

If this publication be true, and the alleged grants be valid, then the shores of North America, from Hudson's bay to the State of New Hampshire, are already barred against any other telegraph company which may wish to extend a line across the Atlantic.

None of these concessions, however, from one to six inclusive, were made to the Atlantic Telegraph Company; but they were made to the New York, Newfoundland and London Telegraph Company, whose seat of power is in New York.

The use made of them in this publication is further evidence of the identity in interest of the two companies. There is, however, one important omission in the "*Summary of privileges accorded for encouraging the completion of the Atlantic telegraph.*" It is the privilege

of locating and appropriating fifty square miles of land in Newfoundland, granted by the legislature of that colony for this specific purpose.

The 11th of these "*privileges accorded,*" &c., is particularly noteworthy. It is "*exclusive traffic arrangements* over 40,000 miles of existing telegraph lines in the United States and British North America."

"Accorded" by whom? *By the American Telegraph Company and their allies.* Already, if this statement be true, forty thousand miles of telegraph on this continent is bound by "exclusive traffic arrangements" to this great transatlantic monopoly!

Doubtless this assertion conveys to the British mind the impression (as well it may) that all the telegraph lines in the United States have been brought under the control of the New York managers of this enormous monopolizing combination, while in fact it only embraces the lines controlled by the American Telegraph Company and their allies. But it proves by the most conclusive testimony the main position taken in the memorial, viz: *the combination of parties in the United States with parties out of the United States by* "exclusive traffic arrangements" *to monopolize the foreign telegraphic correspondence, and, through the same instrumentalities, the domestic telegraphic correspondence also.*

Nothing could more conclusively show the identity of interest and management of the Atlantic, Newfoundland and American Telegraph Companies than this "*summary of privileges;*" and surely, with the proposed bounty of the British and American governments, their arrangements embody a power which timid men might justly fear to encounter. It is against the oppression of that power, composed as it is in part of foreign elements, that the memorialists ask protection, not only for their own business, but for the business of the country, as connected with the telegraph at home and abroad.

AMOS KENDALL. *Chairman, &c.*

Resolved, That the secretary of state be hereby directed to forward a copy of the foregoing resolution to our senators and representatives in Congress.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
DANIEL ANDERSON,
President pro tem. of the Senate.

Approved March 23, 1858.

RALPH P. LOWE.

I hereby certify that the foregoing is a true copy from the original roll on file in my office.

ELIJAH SELLS, *Secretary of State.*
By JOHN M. DAVIS, *Deputy.*

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 237.

RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF IOWA,

IN RELATION TO

The pension of Catharine Dickerson.

APRIL 16, 1858.—Referred to the Committee on Pensions and ordered to be printed.

JOINT RESOLUTION relative to a pension for Catharine Dickerson.

Whereas, it appears to the general assembly that Mrs. Catharine Dickerson, of Muscatine county, is the widow of a revolutionary soldier, and her name appears upon the pension list, under the act of 1848, while in fact, from the date of her marriage, prior to 1793, (competent legal testimony of which appears to be wanting,) she is entitled, under the law of 1836, to back pay, prior to 1848, to that year, (1836.) Therefore—

Be it enacted by the general assembly of the State of Iowa, That our senators in Congress be instructed, and representatives be requested, to use their best endeavors for the passage of a law for the relief of the said Catharine Dickerson, in procuring back pay, from the year 1836 to 1848, at the rate provided by law, ($96 per annum.)

Be it further resolved, That the Secretary of State be instructed to forward a copy of these instructions to our senators and representatives in Congress at an early a day as possible.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved March 22, 1858.

RALPH P. LOWE.

I hereby certify that the foregoing is a true copy from the original roll on file in my office.

ELIJAH SELLS,
Secretary of State.
By JOHN M. DAVIS,
Deputy.

35TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 238.

RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF IOWA,

IN FAVOR OF

An appropriation of money for a double track railroad around the lower rapids in the Mississippi, on the Iowa or west side thereof.

APRIL 16, 1858.—Referred to the Committee on Commerce and ordered to be printed.

JOINT RESOLUTION of the general assembly of the State of Iowa, asking an appropriation of money for a double track railroad around the lower rapids in the Mississippi river, on the Iowa or west side thereof.

Your memorialists would represent: That whereas, the Congress of the United States has heretofore made appropriations of money for the improvement of the navigation of the lower rapids in the Mississippi river by rock excavation in the bed or channel of the river; and

Whereas, said obstructions affecting injuriously the commerce of half the States of the Union, has been partially obviated by the Keokuk, Mount Pleasant, and Muscatine railroad company, in constructing a single track railroad around said rapids, but without the necessary depot buildings, fixtures, and apparatus for removing the large amount of freight from the boats to the cars, and *vice versa;* and

Whereas, the travelling interest and the commerce of the country demand a ready and safe transit around said rapids, which can only be adequately accomplished, in the judgment of your memorialists, by a double track railroad, (until a ship canal shall be constructed,) with the requisite fixtures and apparatus for shipping and reshipping freight, and passing, without hindrance or delay, the heavy amount of travel always to be found upon this highway of the States: therefore—

Be it resolved by the general assembly of the State of Iowa, That it is the deliberate sense of this body that Congress ought to share, at least, a part of the burden of overcoming, in some practicable method, this obstruction in the navigation of said river, and for this purpose it would be just and proper to appropriate to said railroad company some $200,000, to be applied by them in the construction of another rack around said rapids, and otherwise enlarging the facilities of ravel and freight transportation over the same.

And be it further resolved, That our senators and representatives in Congress be instructed, as well as requested, to use their best influence with the government to make the appropriation aforesaid for the purposes aforesaid, and that the secretary of state be required to forward a copy of these resolutions to our senators and representatives in Congress.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
ORAN FAVILLE,
President of the Senate.

Approved March 23, 1858.

RALPH P. LOWE.

I hereby certify that the foregoing is a true copy from the original roll on file in my office.

ELIJAH SELLS,
Secretary of State.
By JOHN M. DAVIS,
Deputy.

35TH CONGRESS, 1st Session. } SENATE. { Mis. Doc. No. 239.

MEMORIAL

OF THE

LEGISLATURE OF THE STATE OF IOWA,

IN FAVOR OF

The repeal of the duty on sugar.

APRIL 16, 1858.—Referred to the Committee on Finance and ordered to be printed.

A MEMORIAL of the general assembly of the State of Iowa to Congress, in favor of the repeal of the duty on sugar.

Your memorialists, the general assembly of the State of Iowa, respectfully represent that, in the opinion of this general assembly, the present duty of twenty-four per cent. *ad valorem* on sugar imported imposes a grievous burden upon the people of the United States.

Sugar is an article in general use by all classes in the State of Iowa, and is regarded as one of the necessaries of life. It was not the early policy of our government to levy a tax on those articles in as common use by the poor as by the rich, and your memorialists can find no good reasons for a persistence by the general government in its present practice of raising a revenue of many millions by a tariff on the food of the poor. Statistics prove that the sugar tax collected at our custom-houses, and the necessary advance in price of our home production from the cane, amount annually to the sum of ten millions of dollars, a sum which, if apportioned among the States of the Union according to population, would demonstrate that ours pays a heavier tax for the professed encouragement of the sugar interest of Louisiana than for the entire support of the State government.

Your memorialists do not conceive it to be the duty of Congress to protect the interests of a single State without a reciprocal benefit to the whole country. The sugar growing interest in its incipiency asked but temporary encouragement that it might invite capital to this branch of industry, and cheapen the price of sugar and molasses. That promised result has not been attained. The sugar cane is an exotic, and so unsuited is our territory to its cultivation, that while one thousand pounds is an average crop in Florida and Louisiana, six thousand pounds is only an average production on the best estates in Cuba and other islands in the gulf. The hope to successfully compete with other countries in the growth of the cane, where it is not

subject to frosts, and is perennial, is proved a fallacy by the experience of more than half a century; and an annual premium of ten millions of dollars to one class of industry seems disproportionate and oppressive to those who are not rich, but struggling with the stern realities of rural and pioneer life, as are many of our constituency. Monarchical governments have yielded to the demands of the people for a repeal of duties on necessary articles of food, and for revenue purposes increased the tariff on the essential luxuries of the rich, a policy which we trust may early be inaugurated by our republic.

Your memorialists, therefore, well assured that the tax on sugar is equal to the gross value of all our home productions from the cane, affording a direct premium to the planter, pray your honorable body to at once place sugar on the free list of imported articles, and, to secure this end, request the secretary of state to forward a certified copy of this memorial to the Speaker of the House of Representatives and President of the Senate, at Washington, to be by them laid before their respective bodies; also to each of our delegation in Congress.

STEPHEN B. SHELLEDY,
Speaker of the House of Representatives.
DANIEL ANDERSON,
President pro tem. of the Senate.

Approved March 23, 1858.

R. P. LOWE.

I hereby certify that the foregoing memorial is a true copy from the original on file in my office.

ELIJAH SELLS,
Secretary of State.
By JOHN M. DAVIS,
Deputy.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 240.

LETTER

OF THE

DELEGATE OF THE TERRITORY OF UTAH IN CONGRESS,

ENCLOSING THE

Memorial of delegates of the convention which assembled in Great Salt Lake City, and adopted a constitution with a view to the admission of Utah into the Union as a State, together with a copy of that constitution.

APRIL 20, 1858.—Read, ordered to lie on the table and be printed.

WASHINGTON CITY, *April* 19, 1858.

SIR: May I respectfully request you to present to the Senate the memorial and constitution which you will herewith receive.

I am, sir, with high respect, your obedient servant,

JOHN M. BERNHISEL,
Delegate from Utah.

Hon. BENJAMIN FITZPATRICK,
President of the Senate.

Memorial to the President and Congress of the United States.

Your memorialists, delegates in convention assembled in Great Salt Lake City, Utah Territory, having formed and unanimously adopted a constitution, with a view to the admission of Utah into the Union as a State, and having unanimously elected and authorized Hons. George A. Smith and John Taylor delegates, to present the said constitution and other pertinent documents to the parent government, and solicit a favorable action thereon, most respectfully represent that it is the unanimous and earnest desire of the people of this Territory that their delegates be favorably received, that the constitution in their charge meet your cordial approval, and that steps be taken, during the present session of Congress, for the admission of Utah, as a free and sovereign State, in the great confederacy of our republic, that another star, shedding mild radiance from the tops of the mountains midway between the borders of eastern and western civilization, may add its effulgence to that bright light now so broadly illumining the governmental pathway of nations, and another link be

united to the western extremity of that strong chain of States, which it is most certainly desirable should stretch, unbroken, across the broad expanse of our common country, from the rich marts of the Atlantic to the golden coasts of the Pacific.

To enlightened statesmen it may be superfluous to allege any of the numerous weighty reasons in favor of the action now respectfully solicited, and most confidently anticipated, yet it may not be amiss to briefly adduce a few.

The constitution which will be presented for your consideration is unexceptionable in its features of republicanism and equal rights, following strictly in the channel of the constitutions of other States. The loyalty of Utah has been variously and most thoroughly tested, and has ever proved pure, even as we trust it ever will. Our position, over one thousand miles from neighboring settlements on either hand, renders the proper transaction of governmental business, as now required to be conducted, almost a nullity, as no mail has reached here by the eastern route since the 26th of last November, a period of four months, an occurrence characteristic of its past history. Almost entirely unaided we have settled isolated wilds which have lain unoccupied for centuries, except by the untutored savage and roving mountaineer, and which even now, were we to seek a more favored region, would soon revert to their former condition of dreary wastes, and crumbling ruins would alone mark the sites of present thriving civilization. We have, to a goodly degree, tamed the fury of the hordes of aborigines within our borders, are setting them peaceful examples of the advantages of civilized life and teaching them its arts; and feel abundantly able to cope with the malevolence of the few who may still prefer bloodshed to peace.

We have enacted good and wholesome laws, guarantying and protecting equally the constitutional and just rights and privileges of all classes of residents, and of those travelling through our borders. And finally, the number of our population calls for and warrants a more extended sphere of governmental operations than is to be found under a territorial organization; and aware that the genius of our free institutions most justly extends to the governed the right of electing their own rulers and officers, and of enacting their own laws and making all needful regulations not repugnant to the Constitution and laws of the United States, which we have no design, desire, or occasion for contravening; therefore, to enable the people of the Territory of Utah the better and more fully to exercise those governmental privileges, so dear to every American heart, and so obviously the right of all who dwell beneath the stars and stripes of our common country, we do most respectfully, yet earnestly, solicit the early admission of Utah as a free sovereign, and independent State, upon an equal footing with the States now forming that justly renowned confederacy, whose motto is "E Pluribus Unum."

Done in convention, in Great Salt Lake City, Utah Territory, on the twenty-seventh day of March, A. D. 1856.

J. M. GRANT,
President of the Convention.

THOMAS BULLOCK, *Secretary.*

CONSTITUTION OF THE STATE OF DESERET.

PREAMBLE.

Whereas, all citizens of the United States have the right guaranteed by the Constitution to make those laws by which they are governed; and

Whereas, it appears from a census report, made pursuant to an act of the late legislature, that the Territory of Utah possesses a population sufficiently numerous to justify them in asserting their claims to this inestimable privilege:

Therefore we, the people, grateful to the Supreme Being for the enjoyment of life and mercy, and feeling our dependence on Him for a continuance of those blessings, do ordain and establish the following constitution.

ARTICLE I.

Boundary and name.

SECTION 1. All that part of the territory of the United States now known as Utah Territory, and bounded as follows, viz: On the west by the State of California; on the north by the Territory of Oregon; on the east by the summit of the Rocky mountains, and on the south by the thirty-seventh (37th) parallel of north latitude, is hereby formed into a free and sovereign State, and named Deseret.

ARTICLE II.

Declaration of rights.

SECTION 1. In republican governments all men should possess their natural rights, among which are those of enjoying and defending their life and liberty; acquiring, possessing, and protecting property, and of seeking and obtaining their safety and happiness.

SEC. 2. All political power is inherent in the people, and all free governments are founded in their authority and instituted for their benefit; therefore they have an inalienable and indefeasible right to institute government, and to alter, reform, or totally change the same, when their safety, happiness, and the public good shall require it.

SEC. 3. All men shall have a natural and inalienable right to worship God according to the dictates of their own consciences; and the general assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or to disturb any person in his religious worship or sentiments; and all persons demean-

ing themselves peaceably as good members of this State, shall be equally under the protection of the laws; and no subordination or preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be ever required for any office of trust under this constitution.

SEC. 4. Any person of this State who may hereafter be engaged, directly or indirectly, in a duel, either as principal or accessory before the fact, shall be disqualified from holding any office under the constitution and laws of this State.

SEC. 5. Every person may speak write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to abridge the liberty of speech or of the press.

SEC. 6. The people shall be secure in their persons, houses, papers, and possessions from unreasonable searches and seizures.

SEC. 7. The right of trial by jury shall remain inviolate; and all prisoners shall be heard by self or counsel, at their own election; and no person shall be held to answer a capital or otherwise infamous crime unless on presentment or indictment of a grand jury; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb, nor be compelled, in any criminal case, to be a witness against himself.

SEC. 8. All penalties and punishments shall be in proportion to the offence; and all offences, before conviction, shall be bailable, except capital offences, where the proof is evident or the presumption great; excessive bail shall not be required.

SEC. 9. The writ of *habeas corpus* shall not be suspended, unless in case of rebellion or invasion, or the public safety shall require it.

SEC. 10. Treason against this State shall consist only in levying war against it, or adhering to its enemies, or giving them aid and comfort.

SEC. 11. The general assembly shall pass no bill of attainder, or *ex-post facto* law, or law impairing the obligation of contracts.

SEC. 12. The law shall not be suspended but by legislative authority.

SEC. 13. The right of petition by the people shall be preserved inviolate.

SEC. 14. The right of citizens to keep and bear arms for common defence shall not be questioned.

SEC. 15. Private property shall not be taken for public use without just compensation.

SEC. 16. No standing army shall be kept up in this State in time of peace, and the military shall at all times and in all places be in strict subordination to civil power.

SEC. 17. The enumeration of certain rights shall not be construed to impair or deny others retained by the people.

ARTICLE III.

The powers of government of the State of Deseret shall be divided into three distinct departments, viz: legislative, executive, and judicial.

ARTICLE IV.

Of the legislative.

SECTION 1. The legislative authority shall be vested in a general assembly, consisting of a senate and house of representatives, the members of which shall be elected by the people.

SEC. 2. The sessions of the general assembly shall be annual, until otherwise provided by legislative enactment; and the first session shall be as hereinafter provided.

SEC. 3. The members of the house of representatives shall be chosen biennially by the qualified electors of their respective districts, whose term of office shall continue two years from the day of their election.

SEC. 4. Senators shall be chosen in the same manner as the representatives, whose term of office shall continue four years from the day of their election.

SEC. 5. No person shall be a member of the general assembly except he be a free white male citizen of the United States, and an inhabitant of this State one year preceding the time of his election, and has, at his election, an actual residence in the district he may be chosen to represent.

SEC. 6. The general assembly shall have power to prescribe the number and make the apportionment of senators and representatives: *Provided*, the number of senators shall not be less than one-third nor more than one-half of the representatives; and at its first session the general assembly shall be divided by lot, as equally as may be, into two classes; the seats of the representatives of the first class shall be vacated at the expiration of one year, and of the senators of the first class at the expiration of two years.

SEC. 7. Each house shall choose its own officers, and judge of the qualification, election, and return of its own members.

SEC. 8. A majority in each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalty as each house may provide.

SEC. 9. Each house shall have all powers necessary for a branch of the general assembly of a free and independent government.

SEC. 10. Each member of the general assembly shall be privileged from civil arrest during any session, and in going to and returning from the same.

SEC. 11. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SEC. 12. The members of the general assembly shall take an oath or affirmation to support the Constitution of the United States and of this State, which may be administered by each other, or by any person qualified to administer oaths.

SEC. 13. The veto power of the governor shall be allowed by the general assembly, except on bills which, when reconsidered, shall be again passed by a majority of two-thirds; and any bill vetoed by the

governor shall be returned within ten days (Sundays excepted) with his objections, otherwise it shall become a law, unless the general assembly, by adjournment, prevent its return.

SEC. 14. Every law passed by the general assembly shall take effect from and after its publication, unless otherwise provided at the time of its enactment.

SEC. 15. At the first election after this constitution takes effect the voters of this State shall elect the same number of senators and representatives as are now elected to the legislative assembly of the Territory of Utah, and according to the present apportionment.

SEC. 16. The legislative power of the general assembly of this State shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and of this State.

ARTICLE V.

Of the Executive.

SECTION 1. The executive power shall be vested in a governor, whose term of office shall be four years. A lieutenant governor shall be elected at the same time and for the same term, who shall be the president of the senate.

SEC. 2. No person shall be eligible to the office of governor or lieutenant governor who has not been a citizen of the United States six years, and a resident of this State four years next preceding his election.

SEC. 3. The governor shall be commander-in-chief of the militia, navy, and all the armies of this State.

SEC. 4. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices.

SEC. 5. He shall see that the laws are faithfully executed.

SEC. 6. When any office shall from any cause become vacant, and no mode is prescribed by the constitution and laws for filling such vacancy, the governor shall have power to fill such vacancy by appointment and commission, which shall expire when such vacancy shall be filled by due course of law.

SEC. 7. He shall also have power to convene the general assembly by proclamation, when, in his opinion, the interests of the State require it.

SEC. 8. He shall communicate by message to the general assembly, at every session, the condition of the State, and recommend such measures as he in his wisdom shall deem expedient.

SEC. 9. In case of disagreement in the general assembly with regard to the time of adjournment, the governor shall have power to dissolve the session by proclamation.

SEC. 10. No person shall, while holding any lucrative office under the United States or this State, execute the office of governor, except as shall be prescribed by law.

SEC. 11. The governor shall have power to grant reprieves and par-

dons, and commute punishments after conviction, except in cases of impeachment.

SEC. 12. There shall be a seal of this State, which shall be kept by the governor and used by him officially, and be called "Great Seal of the State of Deseret."

SEC. 13. All grants and commissions shall be in the name and by the authority of the people of the State of Deseret, sealed with the great seal of State, signed by the governor, and countersigned by the secretary of state.

SEC. 14. A secretary of state, treasurer, auditor of public accounts, and attorney general, shall be elected by the general assembly, who shall continue in office for the term of four years, and shall perform such duties as may be assigned them by law.

SEC. 15. In case of impeachment of the governor, his removal from office, death, resignation, or absence from the State, the powers and duties of the office shall devolve upon the lieutenant governor until such disability shall cease or the vacancy be filled.

ARTICLE VI.

Of the judicial.

SECTION 1. The judicial power shall be vested in a supreme court, district courts, and such inferior courts as the general assembly may from time to time establish.

SEC. 2. The supreme court shall consist of a chief justice and two associates, two of whom shall be a quorum to hold courts.

SEC. 3. The supreme judges shall be elected by the general assembly for the term of six years after the first election under this constitution. At said first election one shall be elected for two years, one for four years, and one for six years.

SEC. 4. The judges of the supreme court shall be conservators of the peace throughout the State, and shall exercise such other jurisdiction and appellate powers as shall be prescribed by law.

SEC. 5. Until otherwise provided by the general assembly the State is hereby divided into eleven judicial districts, as follows:

Great Salt Lake and Summit counties shall compose the first judicial district.

Utah and Cedar counties shall compose the second judicial district.

Juab and San Pete counties shall compose the third judicial district.

Millard and Beaver counties shall compose the fourth judicial district.

Iron and Washington counties shall compose the fifth judicial district.

Carson county shall compose the sixth judicial district.

Humboldt, St. Mary's, Greasewood, and Malad counties shall compose the seventh judicial district.

Cache and Box Elder counties shall compose the eighth judicial district.

Weber and Davis counties shall compose the ninth judicial district.

Green River county shall compose the tenth judicial district.

Tooele, Shambip, and Deseret counties shall compose the eleventh judicial district.

SEC. 6. The judges of the district courts shall be elected by the electors of their respective districts, whose term of office shall be two years, and shall have such jurisdiction as may be prescribed by the general assembly.

SEC. 7. The style of all process shall be "State of Deseret," and all criminal prosecutions shall be in the name and by the authority of the people of the State.

ARTICLE VII.

Of elections.

SECTION 1. All male persons over twenty-one years of age having a residence of six months in this State, being citizens of the United States, shall be entitled to vote.

SEC. 2. Electors shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

SEC. 3. No elector shall be obliged to perform military duty on the day of election, except in time of war or public danger.

SEC. 4. No person in the military, naval, or marine service of the United States, by being stationed in any garrison, barrack, military or naval place or station within this State shall be entitled to vote unless otherwise provided for by law.

SEC. 5. No idiot or insane person, or person guilty of any infamous crime shall be entitled to the privilege of an elector.

SEC. 6. The first general election under this constitution shall be held at such time as the acting governor of this Territory, by proclamation, shall appoint, for the election of a governor, lieutenant governor, representatives in the Congress of the United States, members of the general assembly, and all other officers of this State, as provided for in this constitution. Said election shall be conducted and returns made in accordance with the existing laws of the Territory of Utah at the time when said election shall be called.

SEC. 7. The first meeting of the general assembly shall be as directed by proclamation by the governor elect, and subsequent sessions shall be held as provided by law.

ARTICLE VIII.

Of the militia.

SECTION 1. The militia of this State shall be composed of all able-bodied male citizens between the ages of 18 and 45 years, except such as

are or may hereafter be exempt by the laws of the United States or of this State, and shall be armed, equipped, and trained as the general assembly may provide by law.

SEC. 2. All commissioned officers of the militia shall be elected as the general assembly shall prescribe, and shall be commissioned by the governor of the State.

ARTICLE IX.

Amendments of the Constitution.

SECTION 1. If at any time the general assembly deem it necessary, and for the best interests of the State, that this constitution be revised, altered, or amended, they shall cause such proposed revisions, alterations, or amendments to be published in the same manner as provided for notices of elections, and submitted to the votes of the electors of the commonwealth at their next general election; and if a majority of said electors shall vote in favor of such proposed revisions, alterations, or amendments, the same shall thereafter become parts of this constitution, otherwise this constitution shall remain unaltered.

ARTICLE X.

Miscellaneous Provisions.

SECTION 1. In order that no inconvenience may arise in passing from a territorial to a State government, it is hereby declared that the present organization, laws, and everything pertaining to the territorial government of Utah, shall remain in full force and virtue in law, until superseded by the action of the State government under the provisions of this constitution.

SEC. 2. The compensation of the governor, lieutenant governor, judges, members of the general assembly, and all other officers, shall be as may be prescribed by law.

SEC. 3. All officers of this State may continue in office until supeseded by their successors.

SEC. 4. The officers created by virtue of this constitution shall take an oath or affirmation to support the Constitution of the United States, and of this State, and to faithfully perform the duties of their office.

SEC. 5. The general assembly shall encourage education.

J. M. Grant,
Daniel U. Wells,
Albert Harrington,
Edwin D. Woolley,
Almon W. Bobbett,
John F. Kinney,
William Bell,
Garland Dent,
W. H. Hooper,
S. M. Blair,
Orson Pratt, sen.,
Parley P. Pratt,
J. Chittle,
Samuel W. Richards,
Geo. P. Stiles,
T. S. Williams,
Great Salt Lake County.

Louis Farr,
Chauncey W. West,
Lorenzo Snow,
Jonathan C. Wright,
Weber County.

Joseph Holbrook,
James Leithead,
J. D. Parker,
Davis County.

Geo. D. Smith,
J. C. Haight,
Iron County.

John D. Lee,
Washington County.

Ezra T. Benson,
Tooele County.

Leonard E. Harrington,
James C. Snow,
B. F. Johnson,
Joseph A. Kelting,
Aaron Johnson,
Utah County.

Madison D. Hambleton,
Juab County.

Israel Morley,
George Peacock,
San Pete County.

Samuel P. Hoyt,
Reuben M. Bride,
Millard County.

Enoch Reise,
Carson County.

¶

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 241.

IN THE SENATE OF THE UNITED STATES.

APRIL 20, 1858.—Ordered to be printed.

AMENDMENT

Proposed by Mr. HOUSTON to his resolution of February 16, 1858, viz:

Strike out all after the word "whereas" and insert the following:

The events connected with the numerous efforts of the people of Mexico to establish, upon a reliable basis, an orderly system of self-government, have invariably resulted in complete failure; and whereas the condition of Mexico is such as to excite alarming apprehensions that she may precipitate herself into a wild condition of anarchy; and the more so, as she has demonstrated, from time to time, her utter inability to suppress intestine commotions and to conquer the hordes of bandits by which she is infested; and whereas the United States of of America, on account of the continental policy which they cherish and desire to enforce, can never permit Mexico to be resubjugated by Spain, or placed under the dominion of any foreign power; and whereas one of the most important duties devolving upon civilized governments is to exact from adjoining nations the observance of good neighborhood, thus shielding themselves against impending or even remote injury to their border security: therefore—

Resolved, That a select committee of seven be raised to inquire into and report to the Senate whether or not it is expedient for the government of the United States of America to declare and maintain a protectorate over the so-called republic of Mexico, in such form and to such an extent as shall be necessary to secure to this Union good neighborhood, and to the people of said country the benefits of an orderly and well regulated republican government.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 242.

RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF WISCONSIN,

IN RELATION TO

The admission of Kansas into the Union as a State.

APRIL 21, 1858.—Ordered to lie on the table and be printed.

JOINT RESOLUTION relative to the Lecompton constitution.

Resolved by the people of the State of Wisconsin represented in senate and assembly, first, That Congress has no power by the Constitution, or of common right, to create a State or form a constitution for any people without their consent, and that any attempt to exercise such power should be regarded as a dangerous innovation, alike subversive of the fundamental principles upon which our national institutions rest and of the declaration contained in the charter of our national liberties—that all governments derive their just powers from the consent of the governed.

Second. That the people of this State do solemnly protest against the passage of any act or resolution by Congress introducing or admitting Kansas into the federal Union as one of the States thereof, under the instrument commonly denominated the Lecompton constitution, or under any constitution which shall not have been first submitted, as a whole, to a fair vote of the people thereof, and have been by them ratified and approved.

Third. That they are alike opposed to the passage of any act providing for the formation of a constitutional convention in the Territory of Kansas, unless said act shall provide for just apportionment of delegates to said convention, based upon the number of inhabitants in said Territory, and the election of such delegates by a fair vote of the resident people; and unless provision is made in said act for a submission of any constitution which may be formed, in all its parts, as a whole, to a fair vote of the people for their acceptance or rejection.

Fourth. That the passage of any act or resolution, in the nature of a compromise or otherwise, whereby the admission of Kansas as a State is made a condition to the admission of any other newly formed State, or to the organization of any new Territory, would be a violation both of right and of the principles of just government.

Resolved, That the governor be requested to forward a copy of the foregoing resolves to each of the senators and representatives in Congress for this State, to be by them laid before Congress.

F. S. LOVELL,
Speaker of the Assembly.

H. H. GILES,
President of the Senate pro tem.

Approved April 15, 1858.

ALEX. W. RANDALL.

STATE OF WISCONSIN, } ss.
Secretary's Office.

The secretary of state of the State of Wisconsin does hereby certify that the foregoing joint resolutions have been compared with the original enrolled resolutions in this office, and that the same is a true and correct copy thereof, and of the whole of such original.

In witness whereof, I have hereunto set my hand and affixed the great seal of the State, at the capitol, in Madison, this 16th day of April, A. D. 1858. [SEAL.]

J. D. RUGGLES,
Assistant Secretary of State.

35TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 243.

RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF NEW YORK,

REQUESTING

The Senators and Representatives of that State in Congress to use all honorable means to obtain the promotion of Lieutenant Maury to such rank in the navy as his eminent services and merits entitle him.

APRIL 26, 1858.—Ordered to lie on the table and be printed.

STATE OF NEW YORK,
In Assembly, April 14, 1858.

On motion of Mr. Fullerton, the following preamble and resolutions were adopted:

Whereas, Lieutenant Maury, of the United States navy, having, by his unwearied industry and the application of his vast scientific skill, made discoveries respecting the winds and currents which furnish additional security to ocean navigation, add to the protection of commerce, and contribute to enhance our commercial character and greatness as a people, has entitled himself to the thanks of his countrymen, and to honorable advancement and promotion:

Therefore, (if the Senate concur,) *be it resolved*, That our senators and representatives in Congress be, and they are hereby, requested to use all honorable means to obtain the promotion of Lieutenant Maury to such rank in the navy as his eminent services and merits entitle him to.

And be it further resolved, That his excellency the governor be, and he hereby is, requested to forward a copy of these resolutions to each of our said senators and representatives.

By order. D. WILSON, *Clerk*.

IN SENATE, *April* 15, 1858.

Concurred in without amendment.

By order. S. P. ALLEN, *Clerk*.

35TH CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 244.

RESOLUTION

OF THE

LEGISLATURE OF THE STATE OF VIRGINIA,

IN FAVOR OF

The final settlement of half-pay to officers of the revolutionary war, promised by resolutions of the continental Congress.

APRIL 28, 1858.—Ordered to lie on the table, and be printed.

A RESOLUTION for the final settlement of half-pay to officers of the revolutionary war, adopted by the general assemby March 25, 1858.

Whereas the resolutions of the continental Congress of the 21st of October, 1780, January 7, 1781, and March 8, 1785, promised half-pay for life to the officers of the revolutionary army who should serve to the end of the war, or until the time of their reduction:

And whereas the commutation certificates issued after the war in lieu of said half-pay were greatly depreciated in value, so that the engagements of Congress to the said officers have not been fully discharged:

Resolved, That our senators in Congress be instructed, and our representatives requested, to advocate and vote for any bill now before Congress, or which may hereafter be introduced, providing for the final settlement and payment of the half-pay promised by the resolutions aforesaid, and that the governor of this Commonwealth be requested to transmit to each of our senators and representatives in Congress a copy of this preamble and resolution.

EXECUTIVE DEPARTMENT,
Richmond, April 19, 1858.

SIR: I have the honor to transmit to you the annexed copy of a joint resolution adopted at the late session of the general assembly.

Very respectfully,

HENRY A. WISE.

Hon. ROBERT M. T. HUNTER,
City of Washington, D. C.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 245.

MEMORIAL

OF THE

AMERICAN TELEGRAPH COMPANY,

IN ANSWER TO

The memorial of the Magnetic Telegraph Company and the New England Union Telegraph Company, and remonstrating against the prayer of their memorial being granted.

APRIL 22, 1858.—Referred to the Committee on the Judiciary. Motion to print referred to the Committee on Printing.

MAY 4, 1858.—Report in favor of printing submitted, considered, and agreed to.

To the Senate and House of Representatives of the United States of America in Congress assembled:

The answer and remonstrance of the American Telegraph Company to the "memorial" of the Magnetic Telegraph Company and the New England Union Telegraph Company, and the supplement thereto, which memorial bears date March 10, 1858, and is signed by Amos Kendall and others, committee, &c., respectfully represents:

That said memorial prays for the passage "of a general law which shall prevent combinations between citizens or companies in the United States, and monopolists or companies out of the United States, for the purpose of oppressing telegraph companies, and monopolizing the business of telegraphing in the United States, and shall enable all telegraph lines in the United States to form connexions with all telegraph lines approaching their borders on terms of perfect equality."

Your remonstrants find it difficult to believe that Congress could, in any event, be induced seriously to contemplate the passage of such a law, striking, as it would, without cause, at the ordinary business arrangements of companies, acting under and amenable to the laws of the States or governments by which they are created, and, as your remonstrants believe, interfering unnecessarily to embarrass communication with other countries, to discourage enterprise, and to give to one the fruits of the labor and expenditure of another.

Your remonstrants beg leave to submit the following reasons against the passage of such a law:

It is asked for by *two* only of the *ten* or *twelve* leading telegraph companies of the United States.

The grievance complained of is, that the pecuniary interests of these two companies are not to be benefitted to the extent they had antici-

pated, in the event of the successful completion of the Atlantic telegraph; while it is a fact that the memorialists, though repeatedly invited, have refused to contribute any part of the capital required for such Atlantic telegraph, but, on the contrary, have opposed the enterprise before Congress, and through the public presses under their control, as well covertly as openly.

The injustice of such a law will be apparent when it is considered that parties who, by the expenditure of millions in an undertaking of the greatest hazard, should establish communication from the political or commercial capital of the United States to Europe, would find themselves compelled, in the event of success, to turn over at the frontier an equal share of the business to those who had incurred no risk, who might be wholly irresponsible, and who could perform the service only in a most inferior manner, without forfeiting their claim to equal consideration with the best.

It is worthy of consideration, also, whether a telegraph company, receiving important despatches in a foreign country for transmission to Washington or to New York, and transferring them at the frontier to another, in whose hands they should be delayed, altered, or lost, would not be held responsible for the damage resulting from such delay, error, or loss, and be themselves without remedy.

And if it be proper that telegraph lines crossing the boundary of the United States should be compelled to transfer at that point to other parties a portion or all of the despatches which are destined for places in the United States, it would appear to be within the province of each State through which telegraph lines may run to make a like provision relative to all lines approaching their borders. If such a law be proper in relation to telegraph lines, it would be equally so if applied to railroad, steamboat, express, and transportation companies.

The law sought by the memorialists is designed solely for *their* benefit, *all* of the other leading telegraph companies of this continent being entirely satisfied with their arrangements for connexion with the Atlantic line.

It would, therefore, though professing to be general in its character, have the most obnoxious features of special legislation.

Although the memorialists profess to be prompted only by a desire to share in the business coming over the Atlantic line, they ask for a law which would equally embarrass communication with Canada or the other British provinces, or with Cuba or Mexico.

The law sought for would interfere with contracts that have been in force for many years between telegraph companies, the propriety of which has never been called in question, and for some of which valuable considerations have been given.

Your remonstrants do not comprehend why such a law should be made applicable to telegraph lines approaching the *borders* of the United States any more than to those which are wholly within the United States; and yet the memorialists admit, in said memorial, that *they* have "combined together for mutual defence for thirty years, and made contracts of the same duration with other parties."

The business of telegraphing has hitherto been left to private enterprise and to the regulation of the several States. Can it now be trans-

ferred constitutionally to the jurisdiction of the general government? A provision of the Constitution confers upon Congress the authority "to regulate commerce with foreign nations and among the several States." Does the word "commerce," for which the memorialists have strangely substituted the terms "trade and intercourse," apply to telegraphing?

But if, in the wisdom of Congress, it should be determined that they have the power under this or any other provision of the Constitution to legislate upon this subject, your remonstrants respectfully submit that no sufficient cause for the exercise of this power has been shown, and that the effect of such an application of it as the memorialists seek, would not only be of no benefit to the community at large, but an absolute injury to their interests.

Having presented some of the considerations opposed to the passage of such a law as is sought in the prayer of the memorialists, your remonstrants beg leave to reply to the more prominent charges and representations of said memorial, omitting, however, to notice much that is irrelevant, but to all of which they declare their ability to present a complete answer.

The principal charge of the memorialists is, that your remonstrants have entered into a combination with the New York, Newfoundland, and London Telegraph Company, and the Atlantic Telegraph Company, and have made arrangements, the object of which is to use the power anticipated from the control over the transatlantic correspondence for the injury and, if practicable, the destruction of the lines of the memorialists

Your remonstrants aver, and are prepared to prove, that the only ground whatever for the charge of combination above mentioned, is the fact that, having the only lines extending east from Boston and to Nova Scotia, your remonstrants have entered into contract with the Newfoundland Telegraph Company for an interchange of messages; and upon condition of receiving from said Newfoundland company all of the despatches it may have for transmission westwardly, your remonstrants have agreed to forward despatches between Nova Scotia and New York at rates sixty-five per cent. lower, the difference in distance being taken into account, than those charged upon the lines owned by the memorialists between Washington and Boston. No other contract or understanding whatever exists, or has ever existed, between your remonstrants and either the Newfoundland or Atlantic companies.

The contract above mentioned is precisely similar to those which have been for many years almost universal between the telegraph lines in the United States, and is much less a "combination" than that admitted in said memorial to exist between the memorialists themselves, wherein they have "combined together for mutual protection for thirty years, and have made contracts of the same duration for connexion with other lines."

Such exclusive connexion has existed for more than ten years past between the two companies uniting in said memorial.

Previous to any arrangement being made between the Newfoundland and the American companies, an agreement was entered into, conditionally, by the former with one of the memorialists, the New

England Union Telegraph Company, in which it was agreed that an exclusive connexion should exist between those companies for twenty years, with the further obnoxious provision:

"That the Newfoundland company shall exert themselves to connect with the New England Union line at Boston, so that all business from and to Europe shall come first to, or start last from, New York, over the lines of the New England Union company."*

By this arrangement, all messages coming from Europe for Boston, or any other place *east* of New York, were first to be transmitted to New York, and thence returned to the place of their destination, thus securing to the New England Union company double tolls; and, in like manner, every message from Boston or other places in New England, destined for Europe, was to be first sent to New York, and thence forwarded to Europe.

This agreement was cancelled by notice, which the Newfoundland company had reserved the right to give.

If this contract had continued in force it is not probable the New England Union company would have made any complaints of the impropriety of exclusive connexion with the Newfoundland company; and the Magnetic company, the other memorialist, between whom and the New England Union company an exclusive combination exists, and who would, therefore, have enjoyed a portion of the advantages, appeared to see no objection to such connexion.

Said Magnetic company has always maintained its right to connect with such lines as it pleased, and at this time refuses to return to the "Washington and New York House" line any messages from the Washington and New Orleans line, which is under its control.

They have, also, for many years, refused to accede to the demand of the Baltimore and Wheeling line, that despatches from Washington, or points south thereof, destined for Cincinnati, Louisville, St. Louis, and other points, should be forwarded from Baltimore by that line, and have connected exclusively for the west with lines leading from Philadelphia, *via* Pittsburg, although the former was the most direct route, and, as its proprietors claimed, was entitled to such business by the terms of the conveyance of patent received from Professor Morse, through the gentleman who stands at the head of the memorialists.

The gentleman most prominent among the memorialists in behalf of the New England Union Telegraph Company, who owns more than one-half of its stock, and who formerly owned most of the line between Boston, Massachusetts, and Portland, Maine, then the only line between those points, took the responsibility, for purposes of his own, of refusing to allow the transmission over said line of any messages whatever coming from or destined to pass over the lines in the province of Nova Scotia, and continued in this highhanded manner to embarrass communication with that province until other parties, to whom your remonstrants have succeeded, bought said line of him on his own terms.

As further evidence that the complaints of the memorialists are not

* Extract from the contract, dated May 9, 1855.

founded in the sincere belief that the arrangements of your remonstrants for connexion with the Newfoundland company, or with companies in the United States, are of an improper character, your remonstrants charge that the memorialists have themselves perseveringly sought to effect *perpetual* arrangements, more stringent in their character than those which are made the ground of their complaint.

In July last, at the invitation of the gentleman first among the memorialists, a meeting of ten of the principal telegraph companies of the United States was held, and a proposition was then submitted by him, which contained, among other provisions, the following:

"The several companies, parties hereto, bind themselves to each other to connect exclusively, as far as practicable, with the lines of such existing companies as may become parties to this agreement, and in no event to connect with any new line which may be gotten up in opposition to, or to the obvious injury of any existing line.

"This agreement shall take effect as soon as ratified by any three of the companies, and shall be perpetual."

Your remonstrants were present at said meeting, and were invited to join in this agreement.

Their lines extended then, as they now do, to the province of Nova Scotia. Had they acceded to the proposition, the memorialists would have been content; but any parties who might hereafter have extended lines to the frontier, would have had the very same ground of complaint against the memorialists, that they now claim to have against your remonstrants.

The patriotism and solicitude of the memorialists are only excited when they regard their pecuniary interests as likely to be affected.

At the time of the meeting above mentioned, and directly thereafter, it became evident to your remonstrants that, unless they would accede to terms dictated by the memorialists, their design was to effect a combination in opposition to your remonstrants, and to certain western and southwestern companies. As the proposition above quoted shows, the agreement was to be binding upon the companies signing it, as soon as any three should ratify it.

For twelve years the memorialists have made every effort to prevent competition in the business of telegraphing, and have enjoyed the protection of a patent which has been in force eighteen years; and having been notoriously wanting in the spirit of progress, they now ask for legislation which would compel the enterprising to share with them the well earned reward of their risk and expenditures; and this they presume to ask when they have not only declined to participate in the hazard and outlay of the enterprise, but have endeavored by ceaseless opposition to embarrass its progress.

It is not denied by your remonstrants that all of the companies represented at the meeting in July, excepting only the memorialists, have united in an agreement for their mutual benefit, and for the more prompt interchange of business, but without increasing rates, or otherwise combining to the disadvantage of the public.

And your remonstrants respectfully represent that, as they believe, none of the arrangements made by them in any way violate the legal

or moral rights of any parties; and they aver that no parties have more readily entered into such arrangements than the memorialists who now ask at your hands legislation for their protection.

Your remonstrants deny that they have, either alone or in combination with others, endeavored to force the memorialists to surrender their property, and aver that they have had no desire to bring about a connexion with the lines of the memorialists for any other purpose than that, in the legitimate and proper extension of their own lines, they might avoid a collision of interests with the memorialists, and at the same time have lines extending to Washington, in order to facilitate communication from their other lines; to adopt improved systems of telegraphing more rapid and more perfect; and to reduce the rates between New York and Washington, now higher than in any other part of America, in order that their other lines might be benefitted and their patrons better served. For this end they have repeatedly sought to effect an amicable arrangement with the memorialists.

In November last your remonstrants proposed to lease the property of the Magnetic company for ten years, paying to them an annual rent equal to thirty per cent. upon the cost of new property, superior in every respect to theirs, and covering the same routes; but the offer was rejected.

Subsequently negotiations were opened between the memorialists and your remonstrants, for the purpose of doing away with the prospective antagonism by a union of interests; and on the 23d of December last the following memorandum was agreed upon:

"*Memorandum of an understanding between the Magnetic, American, and New England Union Telegraph Companies, subject to ratification.*

"Let each of the three furnish to the other two a statement of the proportions of a given amount of stock, say, for example, $1,200,000, which they think it right for them to claim in a consolidated company, with the statistics of their receipts and expenses, and every fact on which their claim is based, with proofs. Let each appoint a committee of one, with full power to consider and adjust the amount to be assigned to each. If the committees cannot unanimously agree, each company to select a disinterested person, and the unanimous decision of the three shall be final. No person to be selected as an arbiter who is objected to by either of the companies.

"For the American Company,
"PETER COOPER, *President.*

"For the Magnetic Company,
"AMOS KENDALL.

"For the N. E. Union Company,
"JOHN McKESSON.

"NEW YORK, *December* 23, 1857."

Three days afterward, your remonstrants, by one of their directors, sent the following communication to the representative of the Magnetic company:

"NEW YORK, *December* 26, 1857.

"DEAR SIR: Permit me to hand you, enclosed, a copy of the memorandum of the 23d inst., and a letter addressed to Wm. M. Swain, esq., president, &c., which I send to you, as we understand Mr. Swain is absent at the south.

[The letter referred to was open, and contained an official copy of a resolution of the directors of the American company, appointing one of their number a committee, in accordance with the above memorandum.]

"I am engaged in the preparation of the schedule to be furnished to the other companies, and shall be pleased to receive theirs at their convenience.

"As the committee on the part of this company, to meet with like committees from the others, I shall be prepared to meet them at any time they may agree upon.

"Hon. AMOS KENDALL."

The secretary of the American company received, in reply, the following:

"WASHINGTON, *December* 30, 1857.

"DEAR SIR: I deem it my duty, in courtesy to your company, to inform you that letters received this day from Mr. McKesson render the accession of the New England Union company to the provisional articles recently agreed upon by Mr. Cooper, Mr. McKesson, and myself, entirely hopeless.

"Sincerely regretting that our labors have not led to a pacific result, I must consider the project of the union of the three companies at an end, at least for the present.

"Very respectfully, your obedient servant,

"AMOS KENDALL."

It will, therefore, be evident that the representations of the memorialists to the effect that your remonstrants have sought to oppress them, are unfounded, and that, on the contrary, the memorialists have had every opportunity to participate in any advantages your remonstrants may have secured, but have, of their own choice, declined so to do.

Your remonstrants respectfully represent that they are not aware that the memorialists have any prescriptive right to the telegraphing business between Washington and New York, and, therefore, do not feel the force of the complaint of the memorialists, that they are to be deprived of their local business; although your remonstrants admit that, if such local business should be materially reduced, the Magnetic company could scarcely expect to make dividends of twenty-four per cent. per annum, as they have done in past years, upon the cash capital actually paid in.

They will experience from your remonstrants none but open and fair competition; and if their adherence to old systems of telegraphing, or their prudence or want of enterprise shall prevent them from serving in new fields, your remonstrants see no reason that they should be permitted to reap harvests therein.

Your remonstrants further respectfully deny that the Atlantic, Newfoundland, and American companies are one in interest, or that they have ever been one, and were separated for any purpose whatever, though it is not denied that some of the stockholders in the American company are also owners in the others.

A large majority in numbers and in interest in each of the companies has no interest in either of the others.

It is respectfully submitted, therefore, that the solicitude manifested by the memorialists lest one of the companies charged should hold more than its just share of benefits, is needless.

While your remonstrants might with propriety leave the foreign companies complained of to answer to the authorities by whom they were created and are governed, yet they are unwilling that a misrepresentation of these companies here should be made the ground of unfriendly legislation by Congress.

In 1853 a company obtained a charter from the province of Newfoundland for the purpose of enabling them to erect telegraph lines therein, and to connect them with the continent of America. This company having been compelled, after the expenditure of a large amount, to discontinue the work for want of means, applied to the parties now composing the New York, Newfoundland, and London Telegraph Company, and induced them to purchase the rights acquired under said charter, to pay about $70,000 to cancel the indebtedness then existing, and to undertake the completion of the enterprise. Incessantly since 1854, and in the face of the greatest discouragements, said Newfoundland company has energetically pushed forward the undertaking. Their lines through the province of Newfoundland and the island of Cape Breton were constructed with great difficulty and at an expense unavoidably exceeding, as your remonstrants are prepared to show, by more than ten-fold the cost of lines of like extent in the United States. In 1855 their effort to lay a cable across the Gulf of St. Lawrence was unsuccessful. A second cable was procured and laid in the following year. They have already expended more than $800,000, and have realized no return from their investment, but, on the contrary, the line is now worked at a loss.

In 1856 the Atlantic company was formed in England, through the earnest efforts of one of the directors of the Newfoundland company, who manifested his confidence in the enterprise by incurring individual responsibility for more than $400,000 of its stock. This stock he offered *at cost* to any parties in America; but not a share was taken by the memorialists, who now demand that the government shall secure to them advantages likely to result from the risks incurred alone by some among your remonstrants, and others with whom they are charged to be improperly confederating.

Your remonstrants beg leave to say that the director above referred to has, in addition to the sacrifice of his own valuable private business, paid for and still holds no less than $130,000 of the stock of the Atlantic company, making his individual outlay, including his investment in the Newfoundland company, to exceed $300,000; no part of which is, as yet, productive. After the sacrifices he has made and the risks he has taken to secure the success of this most important under-

taking of the age, the fate of which is still uncertain, it is most unjust that he should be assailed as he is in said memorial, and that unworthy insinuations of mercenary motives should be thrown out in regard to him, when he so richly merits distinguished honor.

His *individual* investment in the hazardous experiment of establishing telegraphic communication between the continent of America and Ireland is greater than the actual cost of the whole of the lines owned by the memorialists.

Your remonstrants respectfully submit that the representations of the memorialists, that inordinate gains are to be reaped by individuals from the Atlantic line are based wholly on *estimates* of *probable* profits, and form no good reason for legislation likely to embarrass the enterprise at a time when the result is uncertain, especially as the governments have reserved the right to regulate the tariff of rates.

Your remonstrants are aware of the great benefits conferred upon the enterprise of the Atlantic telegraph by the governments of Great Britain and the United States in permitting the use of vessels of their navies to assist in the great work; but neither government has been called on to contribute anything further towards the cost of the work, and the annual sum which they have agreed to pay for the transmission of their despatches does not begin to accrue until the line is in successful operation; and so soon as the enterprise yields a return of six per cent. to the company, the amount which each government is bound to pay is limited to $50,000 per annum.

The Atlantic company has, as yet, received no appropriation of money in aid of its undertaking from any source.

Shares of the Atlantic company, which cost the subscribers £1,000 each, have been freely offered as low as £500, and many of the original shares are now upon the market at a price far below their cost. It is not known to your remonstrants that any underwriter of responsibility in the world will insure upon the next attempt to lay the cable.

Your remonstrants beg leave further to state, that while individuals among their number have made great exertions to secure the successful completion of the Atlantic line, there have been parties, encouraged, as your remonstrants believe, by the memorialists, who have sought, first from the legislature of the State of New York, and subsequently from the provincial parliament of Canada, a charter for a rival Atlantic line.

Your remonstrants do not deny that, under these circumstances, and the impossibility of obtaining the necessary capital without some such arrangement, the Newfoundland and Atlantic companies did obtain from eastern States and provinces assurances, which were cheerfully granted, that they should enjoy alone, for a specified period, the right of connecting an ocean line to the coast, in order that their investment might be saved from utter destruction, if, haply, a successful issue should crown the Atlantic enterprise. To this extent only are the companies named open to the charge of *monopoly*, so prominently set forth in said memorial.

Your remonstrants respectfully submit that it is not unreasonable that a work of such vast cost as the Atlantic telegraph, being wholly

of an experimental character, should receive at least as much encouragement as an *invention* for which patents are granted.

The memorialists are in the enjoyment of a patent which has been made to cover a period of twenty-one years. The lines of the memorialists extend eastwardly only to Boston, and were erected many years ago, with no reference whatever to a connexion with Europe.

Having hazarded nothing in the experiment of the Atlantic line, or in the costly constructions of the Newfoundland company, but, on the contrary, having opposed the former to the limit of their power, the memorialists now demand, for *their protection*, that they shall be permitted to share in the prospective benefits of these undertakings.

Confidently believing that Congress will regard the general considerations first presented, to which others equally forcible might be added, as in themselves amply sufficient to require the denial of the prayer of the memorialists, your remonstrants respectfully submit that the peculiar circumstances of the case afford important additional reasons in opposition to the desired enactment.

PETER COOPER,
WILSON G. HUNT,
Committee of the American Telegraph Company.

APRIL 20, 1858.

35th Congress, 1st Session. } SENATE. { Mis. Doc. No. 246.

IN THE SENATE OF THE UNITED STATES.

May 4, 1858.—Referred to the Committee on Claims.

The Court of Claims submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

J. L. WIRT *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Protest by claimant against the removal of earth, transmitted to the Senate.
3. United States Solicitor's brief.
4. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this third day of May, A. D. 1858.

[L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable Court of Claims of the United States:

The petition of John L. Wirt, of the city of Washington, respectfully represents: That he is the owner, in fee simple, of lot No. 3, in square No. 685, as laid down in the official plat of survey of the city of Washington. That said lot is situated on the east side of North Capitol street, in said city.

That the grade of said North Capitol street was fixed by the proper authority as long ago as the year 1789, as will appear from an examination of the "book of graduations," (one of the books of record deposited in the office of the surveyor of the city of Washington,) a true copy, and extract wherefrom, duly certified by H. W. Ball, surveyor of said city, is filed among the papers in this case. That said

grade was duly laid down and recorded by Nicholas King, at that time the surveyor of the city.

That, notwithstanding the grade of said street was thus fixed and established, in 1824, Joseph Elgar, the Commissioner of Public Buildings, caused said North Capitol street to be cut down, in order to procure earth to make the road way around the Capitol square, thus destroying the original fixed grade and forming another, which your petitioner supposed was to remain as the established grade of that street, and he was so informed by the surveyor of the city, William P. Elliot, in the year 1842 or 1843, about which time your petitioner erected a dwelling-house on said lot, at what he was thus officially informed was the then fixed grade of that street.

Subsequently to the erection and completion of said dwelling-house, a further excavation was made in said North Capitol street by authority of the United States, about the years 1850 and 1851, for the purpose of procuring earth to improve Maryland avenue, and to obtain gravel and sand for Twelfth street west, reducing said grade in front of the house of your petitioner so much as greatly to damage his property.

That in the year 1855 a further excavation was made in said street by the same authority, for the purpose of procuring earth to fill up the public reservation belonging to the United States, north of the Capitol square, at which time the grade of the street was reduced to its present level, which, your petitioner is informed, is now the grade fixed by Randolph Coyle, esq., United States engineer, appointed by law "to complete and revise the grades of the city of Washington, under the direction of the President of the United States." So that now your petitioner's house is far above the present grade, and is very seriously damaged, as will plainly appear upon an inspection thereof, if your honors shall think proper to view the same, (it being in the immediate vicinity of the Capitol,) and as will be shown by the testimony of witnesses, whom your petitioner will produce, under the order of this honorable court.

Your petitioner will show that the said injury and damage have been done by the authority of the United States, and under color and pretext (and, as your petitioner believes, in fact and truth) that the same was necessary for the public use and benefit; and he humbly submits that he is entitled to ask and receive a just compensation for the value of his property thus taken away from him. Your petitioner has, as often as it became necessary, duly protested to the proper authorities that he held the United States liable, and bound to make good to him all his damages in the premises; and he submits that there is an implied contract on the part of the United States to compensate and indemnify him fully in the premises, upon which implied contract (waiving any demand for a tort, if any he have) he now relies.

The action of Congress on this claim has been as follows, viz:

On the 14th day of February, 1853, your petitioner, in company with Charles Wilkes, W. P. Elliot, W. H. Stanford, William Skelly, and P. W. Browning, all of whom were damaged by said excavations, petitioned the Congress of the United States for relief, and the peti-

tion was, on the same day, referred by the House of Representatives to the Committee on Public Buildings and Grounds, and by direction of said committee, when the bill making appropriations for the civil and diplomatic expenses of government was under consideration, an amendment was offered thereto by Mr. Bowie, a member of the committee, authorizing a legal process and inquiry, which was intended for the relief of the petitioners, but which was decided to be out of order.

On the 13th of January, 1854, the same petition was again presented to the House of Representatives, and again referred to the same committee; and on the 21st of June, 1854, Mr. Chamberlain, a member of that committee, made a report thereon, by order of the committee, stating the desire of the committee that justice should be done to the petitioners, and the efforts of the committee to obtain the opinion of the Attorney General of the United States, "in order that an effectual remedy might be afforded." These efforts having failed, the committee recommended that the petition and papers be referred to the Committee on the Judiciary, which was done; and on the 8th day of February, 1855, Mr. Stanton, chairman of that committee, reported a bill "providing compensation to owners of property in the city of Washington, injured by alterations of streets by authority of the United States," which bill was not acted upon during the session for want of time.

On the 14th of February, 1856, said petition, with the accompanying papers, was again referred to the Committee on the Judiciary in the House of Representatives, and on the 27th day of the same month a resolution was reported to the House, directing said petition and papers to be referred to this honorable court, which resolution was adopted, and the petition and papers were sent here, and are now on the files of the court.

Your petitioner now asks that you will take his case into consideration, and award to him such damages as, in your opinion, he has sustained.

Your petitioner avers that he is the sole owner of this claim.

JOHN L. WIRT.

DISTRICT OF COLUMBIA,
Washington County, March 17, 1856, } *ss.*

Personally appearing, the said John L. Wirt made solemn oath that the statements by him made in the foregoing petition by him subscribed, are, in his belief, true.

Before me,

B. B. FRENCH,
Justice of the Peace.

B. B. FRENCH,
F. P. STANTON,
Attorneys.

IN THE COURT OF CLAIMS.

ON THE PETITION OF JOHN L. WIRT.

Brief of Solicitor for United States.

This is one of several claims for indemnity for injury to property caused by an alteration of the grade of North Capitol street, made by the authority of the United States.

The only question in the case is, whether the government, in which was both the political and proprietory sovereignty over the street the grade of which was altered, had a right to make the change in its grade for public convenience (which it is not alleged was unskilfully or improperly made) without being responsible to contiguous lot-holders for the real or imaginary depreciations in the value of such lots which may result from such changes of grade. It is argued that such depreciation is an act which causes a *taking* of private property for public use within the meaning of the Constitution, and, hence, that an obligation to pay results. It is not necessary in this case to inquire to what case that clause of the Constitution applies.

It is not necessary to determine in this case whether the Constitution extends merely to property which is directly applied to the public use, as when a horse is taken for its service—or includes cases where the *taking* is consequential only on acts done for public service, as when land is flowed by a dam or bridge erected by public authority. To bring a case within either class of cases, it is not enough that the value of the citizen's property be impaired, but some *right* must be taken from him or abridged. The value of property is subject to changes from a variety of circumstances which in nowise affect the rights of the owner; and it by no means follows, that because a man does an act which either raises or depreciates another's property, that he can either claim compensation from or be made to indemnify the owner. The mere location of a public house near a vacant lot sometimes enhances or depreciates the value of the lot immensely, according to the character of the building, and yet the owner of such a lot has no *right* of property affected by the erection of the building. Whether the party who erects the building or does the act which depreciates the value of the lot is bound to indemnify the owner, depends altogether upon the question, whether he can lawfully do the act in question. In the case of the erection of a building which affects injuriously the neighboring property, if it be a building not forbidden by law, no one would pretend that the neighbors, however much it depreciated the value of their lots, could either require the building to be pulled down, or the owner to indemnify them for the depreciation.

This is one of the contingencies which subjects property to fluctuations, against which the law does not protect the owner, and which it would be absurd to attempt to guard against by legislation.

As property fluctuates in value by the erection or destruction of neighboring improvements, lawfully made or done by private persons

without their acquiring any right against the owner, or incurring any obligation to him, so improvements or similar acts, lawfully made or done by the public, create no demand by or against the government. The government has an equal right to improve the public roads or streets, that a proprietor has to improve his lots. Either can make the ordinary use of such property without being called in question for the effects which result to the property of others.

In this case, the only complaint is, that the United States altered the grade of North Capitol street, and that an injury resulted to the claimant. The same complaint was made in the cases of Goszler *vs.* Georgetown, 6 Wheat. 593, and Anne C. Smith *vs.* Washington city, 20 Howard, and it was expressly decided that the authorities of these cities might alter the grades of the streets without incurring any responsibility to the owners of lots for the damage supposed to result from the change. And I understand these decisions to rest on the principle I have above endeavored to illustrate—that, to create a demand, there must not only have been a loss, but that the loss must have been occasioned by a wrongful or illegal act; and in the last case, that of Anne C. Smith, the court says expressly that that damage complained of is *damnum absque injuria.* But the argument here is, that this means only that the city of Washington was not responsible, and it is supposed to be possible to exonerate the city of Washington, which acted as the agent of the United States, and yet hold the United States. The government, it is said, has the right to authorize the taking of private property, and government agents are not personally responsible when acting within the scope of their authority; and in the cases of Smith and Goszler, it was only decided that the agents acted within their authority.

But these decisions cannot be evaded in this way. The actions were in *tort,* and the defence was, that no wrong had been committed because the lot owners held their lots subject to the right of the government, whose authority for that purpose was delegated to these cities to grade the streets; and this defence was held to be good. If the cities had had no defence but the constitutional right of the government to take private property, they must have been found guilty of the trespass alleged against them; because, before the property could have been taken under that right, the compensation must have been made.

In Smith's case, as already stated, the court say that the damage complained of is "*damnum absque injuria.*" This language means not only that the defendant is not liable, but that the plaintiff is without remedy.—(See Bacon's Ab. Actions on the Case; C. Dane. Ab. Index h. t.; also, 9 Pick. 59, 528.)

M. BLAIR.

IN THE COURT OF CLAIMS.

JOHN L. WIRT *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

The petitioner states the following case: He is the owner, in fee

simple, of lot No. 3, in square No. 685, in the city of Washington. The lot is situated on the east side of North Capitol street, in that city.

The grade of North Capitol street was fixed by the proper authority as long ago as the year 1789. It was duly laid down and recorded by Nicholas King, at that time the surveyor of the city.

Notwithstanding this grade was thus fixed and established, the Commissioner of Public Buildings, in 1824, caused North Capitol street to be cut down, in order to procure earth to make the roadway around the Capitol square. He thus destroyed the original fixed grade and formed another, which the petitioner supposed was to remain as the established grade of that street. He was so informed by the surveyor of the city in the year 1842 or 1843, about which time the petitioner erected a dwelling-house on his lot, at what he was thus officially informed was the then fixed grade of that street.

About the years 1850 and 1851 a further excavation was made by the United States in North Capitol street for the purpose of procuring earth to improve Maryland avenue, and to obtain gravel and sand for Twelfth street west, reducing the grade in front of the petitioner's house so much as greatly to damage his property.

In the year 1855 a further excavation was made by the same authority in North Capitol street for the purpose of procuring earth to fill up the public reservation north of the Capitol square. The grade was then reduced to its present level, which, the petitioner is informed, is the grade fixed by Randolph Coyle, United States engineer, appointed by law "to complete and revise the grades of the city of Washington, under the direction of the President of the United States." The petitioner's house is now far above the present grade, and very seriously damaged.

The petitioner will show that the said injury and damage have been done by the authority of the United States, and under color and pretext (and, as the petitioner believes, in fact and truth) that the same was necessary for the public use and benefit; and he submits that he is entitled to ask and receive a just compensation for the value of his property thus taken away from him. The petitioner has, as often as it became necessary, duly protested to the proper authorities that he held the United States liable, and bound to make good to him all his damages in the premises He submits that there is an implied contract on the part of the United States to compensate and indemnify him fully in the premises; upon which implied contract (waiving any demand for a tort, if any he have) he now relies.

The petitioner states the action of Congress in his case. It was referred to this court by the House of Representatives.

Such is the petitioner's case, as set forth by him in his petition; and the question now to be determined is, whether testimony shall be ordered.

In the case of Anne C. Smith *vs.* The Corporation of Washington, (not yet reported,) the Supreme Court held, that the power given to the corporation of Washington in their charter "*to open and keep in repair* streets, avenues, lanes, alleys, &c., &c., agreeably to the plan of the city," includes the power to alter the grade or change the level of

the land on which the streets, by the plan of the city, are laid out; and that when they perform this trust, according to the best of their judgment and discretion, without exceeding the jurisdiction and authority vested in them as agents of the public, and on land dedicated to public use for the purpose of a highway, they do not act unlawfully or wrongfully. "They have not," say the court, "trespassed on the plaintiff's property, nor erected a nuisance injurious to it, and are, consequently, not liable to damages where they have committed no wrong, but have fulfilled a duty imposed on them by law as agents of the public. The plaintiff may have suffered inconvenience and been put to expense in consequence of such action; yet, as the act of the defendants is not 'unlawful or wrongful,' they are not bound to make any recompense. It is what the law styles '*damnum absque injuria.*' Private interests must yield to public accommodation; one cannot build his house on the top of a hill in the midst of a city and require the grade of the street to conform to his convenience at the expense of that of the public.

"The law on this subject is well settled, both in England and this country."

The same principle had been decided in the case of Goszler *vs.* The Corporation of Georgetown, 6 Wheaton R., 593. But it is supposed that it goes no further than merely to exempt from liability to action the corporations who exercise such a power. But this is a mistake. In such cases the principle that private property shall not be taken for public use without just compensation is inapplicable. That principle has always been confined, in judicial application, to the case of property actually taken and appropriated by the government. It does not extend to indirect or consequential damage or loss occasioned by the lawful use of property already belonging to the public.—(Callender *vs.* Marsh, 1 Pick. R., 418.) And such is the doctrine in the case of Anne C. Smith *vs.* The Corporation of Washington.

A similar principle prevails in reference to the rights of co-terminous owners of land. A man has the right to dig a pit upon his own land, if necessary to its convenient or beneficial use, when it can be done without injury to the land of his neighbor *in its natural state.* His right to dig the pit is but the right to improve his own land, and his neighbor cannot deprive him of this right by the erection of a building, the weight of which will cause his neighbor's land to fall into the pit. The doctrine upon this subject is, that in all cases in which the owner of land has not, by building or otherwise, increased the lateral pressure upon the adjoining soil, he has a right to its support, as a right of property necessarily and naturally attached to the soil. But where anything has been done to increase the natural pressure, as where buildings have been erected, no man has a right to such increased support, unless the building or other thing, which makes it necessary, is of *ancient* erection. Hence, a person may make reasonable improvements and excavations on his own land, though they should injure or endanger an edifice on the adjoining land by digging near and deeper than its foundations, provided he exercise ordinary care and skill, and the suffering party does not possess any special privileges protecting him from the consequences of

such improvements, either by prescription or grant.—(Thurston *vs.* Hancock, 12 Mass. R., 221; Panton *vs.* Holland, 17 Johns. R., 92.)

In the city of Washington, the land on which the streets are laid out belongs to the United States in fee simple, and the streets are highways, which have been dedicated to the public. The power to regulate them is vested in Congress, to be exercised directly, or by such individuals or corporations as may be authorized by Congress. They may repair and amend the streets, and, for this purpose, dig down and remove the soil sufficiently to make the passage safe and convenient; and in doing so, they but exercise a power analogous to that which an individual exercises in making an improvement on his own land. Hence, any consequential loss which may result to an individual from the proper exercise of this power is "*damnum absque injuria.*" For this reason, every one who purchases a lot upon the summit, or on the decline of a hill, is presumed to foresee the changes which public necessity or convenience may require, and may avoid or provide against a loss.—(Callender *vs.* Marsh, 1 Pick. R., 431.)

In the present case, the petitioner complains of two several changes which have been made in the grade of North Capitol street by authority of the United States, and he alleges that his house has been "very seriously damaged" thereby; but he concedes that the changes were "necessary for the public use and benefit." This, in the language of the court, in the case of Smith *vs.* The Corporation of Washington, "is what the law styles '*damnum absque injuria.*' Private interests must yield to public accommodation; one cannot build his house on the top of a hill in the midst of a city and require the grade of the street to conform to his convenience at the expense of that of the public."

In the case of Callender *vs.* Marsh, 1 Pick. R., 433, the court say: "Cases apparently hard will occur; the present is such a one. The plaintiff's house has been standing twenty years, and he had reason to expect that in any contemplated improvement in the streets his liability to expense would have been attended to by the city authorities. * * * * * It may be a case very suitable for the consideration of the city authorities, whether, according to the practice in like cases of improvements designed for the general good, necessarily creating expense to individuals, some fair indemnity ought not to be allowed; but of this they are the judges. If it is not now within the authority of the city officers, it is certainly worthy of consideration whether an application to the legislature ought not to be made to authorize them to indemnify those citizens who may, in the necessary exercise of powers used for public improvement or convenience, be made indirectly to contribute an undue proportion for those purposes; and there seems to be no good reason why others, whose property is enhanced in value at their neighbor's expense, should not be held to furnish part of the indemnity." It may be that this case, too, is one of hardship; but upon this point we can give no opinion. It has been submitted to us merely upon the petition, and our opinion is, that the facts therein set forth do not furnish any ground for relief.

No order will be made authorizing the taking of testimony in this case.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 247.

IN THE SENATE OF THE UNITED STATES.

MAY 4, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

WILLIAM DAVENPORT *vs.* UNITED STATES.

1. The petition of the claimant.
2. Claimant's brief.
3. United States deputy solicitor's brief.
4. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this third day of May, A. D. 1857. [L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Judges of the Court of Claims:

The petition of the undersigned, William Davenport, formerly a colonel in the United States army, and now a citizen of Philadelphia, respectfully shows unto your honors: Upon the adjustment of my accounts with the government, as collector of military contributions in Mexico during the late war, under the act of the 3d March, 1849, it was decided to my loss, and, as I believe, without the authority of law or regulation, as I shall endeavor to prove, that wood, quarters, forage, and the amount allowed by law for the public use of private servants, were emoluments, and as such, the cost of these things were charged to and deducted from my private account. Fuel, quarters, stationery and forage, are enumerated in the 951st paragraph of the

general regulations of the army, as *allowances made to the army.* These and other allowances to the army, upon the authority of this paragraph, are executive allowances, amounting, perhaps, to not less than a million dollars per annum. Can it be presumed that, if this large sum could by any construction of the word be regarded as individual emoluments, the disposal of it would be left to the mere will and pleasure of the Executive, without the aid and direction of legislative authority. The business of the army cannot be conducted without expense, and it will be entirely consistent with the customs of the service, in all cases, including my own, that the cost of the articles issued *to the army* should be borne by the *government itself.* The ammunition furnished the army, and the transportation allowance to officers belong to the same category, neither of which has ever been considered an emolument. I am persuaded that fuel and quarters are furnished the army solely with a view to insure a proper discharge of the duties required of it, and it will be granted that this opinion is greatly strengthened, when we consider that these allowances are only given to those *actually on duty.*

Fuel and quarters are given to non-commissioned officers, musicians, privates, washerwomen, and servants. No one ever heard of any law or regulation giving emoluments to any of these ; and where is the law or regulation which declares these things directly or indirectly to be emoluments, when given to an officer. If there is any of this import, let it be shown, or the amount stopped for those articles, so long since returned to me.

By paragraph 968, it is made the duty of the quartermaster's department, when there are no public quarters, to hire them. I was put upon duty at Matamoras by the order of the War Department, and was furnished with quarters in compliance with this paragraph; and furthermore, the price to be paid for them was fixed by that department. If quarters were furnished officers for their private use, it would hardly be made the duty of the quartermaster's department to furnish them. Quartermasters are not the agents of officers, non-commissioned officers, &c., but the agents of the government. The house for which I am charged rent was furnished me by the government—it was occupied for public purposes, and should be paid for by the public. I am, no doubt, the first officer and probably shall be the last, ever required to pay the rent for a house furnished me by the public, and occupied for public purposes only.

The colonel of ordnance, and others on the same footing with me, as regards emoluments, occupy as many rooms in a house at Washington, rented by the United States, called the Winder building, as are needed for the conducting of the public business required of them. Suppose it should become necessary, in the settlement of their accounts with the government, as it has been in my case, to deduct the cost of their emoluments, it can hardly be imagined that the rent of these rooms would be deducted as such? This would be extravagant, yet it would be quite as proper in that case as it is in mine, nor would the question be materially changed, if these officers, laboring as I did, from the rising to the setting of the sun, slept in the corner of one of them.

But I have another claim to the restoration of the sum deducted on the settlement of my accounts, for the rent of "rooms."

In the adjustment of my accounts as collector of military contributions at Matamoras, Mexico, under the act of the 3d of March, 1849, by the commissioner of customs, approved by the President, he states the amount to be allowed me under the law, "exclusive of clerk hire, and other expenses incident to the office of collector," and of course the office also. In the settlement which took place in accordance to the statement of the Commissioner of Customs in the War Office, no deduction was made for clerk hire; and under this decision, it is plain none should have been made at any time for fuel, that being an "expense incident to the office of collector," or for the rent of "rooms," which the duty of collector required of me by the government, compelled me to occupy as offices. The act made my compensation the same as a collector in the United States of a port when the amount assimilated, or nearly so. The accounts were adjusted on this basis. As collectors of customs in the United States are furnished as many rooms for offices as are needed at the public cost, I can but regard it as an oversight, which I have been unable to bring to the attention of the honorable Secretary of War, that the rent of the rooms occupied by me while collector was charged to my private account; and it is quite manifest that the amount of my compensation as collector has been less, to the amount of this deduction, than the law grants me.

I was employed at Matamoras about fourteen months as collector of military contributions. My collections, as my returns show, amount to more than one thousand dollars per day. Can it be possible, with law and justice on my side, as I think I have shown, that the government seriously intend to make me pay the rent of the house furnished me by the public, indispensably necessary to do the public work in? I may be believed, for it is an undeniable fact, when I say, if no duty had been required of me at Matamoras but that properly belonging to my military commission, there would be no question to settle about quarters. I should have been with the troops in the tented field.

It is plainly declared by paragraph nine hundred and sixty-three, that "fuel is to be considered public property until used; it is on no account to be sold for the benefit of those for whom it is issued, nor to be removed from the public post but by order of the senior quartermaster; and any surplus shall revert to the United States." "Fuel shall be considered public property until used." By this regulation, we see that so long as any fuel remains unconsumed, it is declared to be public property. After it is consumed, of course nothing remains in the shape of fuel, yet this nothing is charged to me, in the adjustment of my accounts as an emolument.

Again, it is further declared by the regulations, that "fuel is on no account to be sold for the benefit of those for whom it is issued." If fuel is given as an emolument, why this prohibition? Should any doubt still remain as to the meaning of this regulation, it may be removed by recollecting that public property cannot become an individual emolument, while the public retains the ownership of it so long as any remains. This is so plainly declared, as regards fuel, none can misunderstand it. The same reasoning, and the same rule,

applies to quarters, forage, stationery, and, indeed, to many other allowances. The charge for stationery was withdrawn. All the other articles enumerated in paragraph nine hundred and fifty-one, seem to be precisely of the same character, and upon the same footing, and if so, it is difficult to perceive why these charges did not all fall or stand together.

The act of the 24th of April, 1816, establshing my claim to forage, and the pay, rations and clothing for the horses and servants I had in the service, from the 9th of May, 1847, to the 30th of June, 1848. This law is in the nature of a contract between the government and the officer, and as such it could hardly have been the intention of the act of March, 1849, to disturb it. This law, indeed, does not seem to warrant such meaning; and it is certain such construction would make it retrospective in its operation—which we may conclude never could have been contemplated by the legislature.

It is provided by law, already referred to, that "when forage is not drawn in kind by officers of the army entitled thereto, eight dollars per month for each horse shall be allowed in lieu thereof." The question of forage is further regulated by paragraph 999, and following, and in compliance therewith; choice being given, I drew forage for two horses while in command at Matamoras.

Public horses are foraged at the public expense, as a matter of course. The act provides for the foraging of the private horses of mounted officers, which they are required to keep in the public service, and as such, a further provision is made by law for paying for all private horses killed in battle. The horses I had in the public service, in compliance with this act, were my private property, and the servants employed by me at the same time were my private servants. The forage furnished the horses of mounted officers, actually kept in the service, or eight dollars per month for each horse in lieu thereof, and the pay, rations and clothing of a private soldier, for each servant kept in the service, in accordance with the act, must clearly be intended, and given, as a just compensation for the public use of the same. When we look into the Constitution, no room for doubt remains. We there find, in the latter part of the fifth article of the amendments, that private property shall not be taken for public use without just compensation. If this provision of the Constitution has any force or meaning, a law cannot be made with the construction you have given the act of the 3d of March, 1849. I claim, as I think I have fully shown, upon the authority of law and regulations, the return to me of the amount, $1,033 41, together with interest, illegally charged to, and deducted from my private account for fuel, quarters, forage, and the legal allowance for private servants employed upon the terms of the law, as above shown, from the 9th of May, 1847, to the 30th of June, 1848. And I may here state, that I fully believe my claim a just and legal one, or I should assuredly not make it. It is certain, I know of no law, regulation, judicial decision, or precedent opposed to it; and conclude, if any existed, the honorable Secretary, who has not regarded my claim with favor, would have pointed my attention to it as a reason for rejecting my application. I presume it will not be claimed, even by the honorable Secretary of

War, who rejected my claim, that a law can be made to take effect before its date, or that a law can be passed in 1849, taking from me what I was entitled to, and in legal possession of, two years before, by laws then and still existing. This law, however, is not so much to be complained of as the abuse of it. It nowhere requires, or even authorizes the cost of public quarters, rented by an officer of the Quartermaster's Department for public use, and occupied wholly for that purpose, charged to me, and deducted from my private accounts. Nor does it, or any other law known to me, sanction the other charges and deductions complained of.

NOTE.—I may add, that ever since the formation of the government, mounted volunteers called into service have been allowed at least forty cents a day for the public use of their horses, and forage besides.

So much of the correspondence between the War Department and myself, which is requisite to the understanding of the grounds of the department's decision, is herewith inserted for the consideration of the Court. Of course, all the correspondence can be at once produced, if ordered by the Court.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
October 18, 1851.

SIR: Your letter of the 27th ult. was received on the 29th; the delay in replying to it requires some explanation.

Subsequent to the adjustment of your account in August last, it was ascertained at the office of the Second Comptroller, from the accounts of Major W. W. Chapman, there made revision, that payment had been made by him for rented quarters for you, and of the issue also, on your requisition, for fuel, forage, and stationery, within the period you were allowed compensation as collector of military contributions. Upon receiving this information, it became my duty to apprise the Secretary of War of the fact, it having been previously reported from this office that you were not found accountable here for anything as a set-off to your compensation as collector. The communication was made to the Secretary of War on the 27th of September, submitting for his instructions, with the items above referred to, amounting to $677 86, should be a further deduction. On the 13th inst. I received instructions from the Second Comptroller to restate your account, and to add $677 86 to the sum heretofore ordered by the Secretary of War.

In compliance with these instructions, a further statement was made, and reported on the 13th inst. to the Second Comptroller, reducing the balance in your favor, to $2,181 36, and returned to this office on the 17th, confirmed by him.

Very respectfully, your obedient servant,

JNO. S. GALLAHER,
Third Auditor.

Col. WM. DAVENPORT,
Philadelphia, Pa.

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
October 24, 1851.

SIR: In reply to your letter of the 20th inst., I have to say, that before you were last written to, a thorough examination was made of the subject to which it refers, and the sum, as stated to you, was found to be the actual cost of the emoluments furnished you by the government whilst acting in the capacity of collector at Matamoras from the 9th of May, 1847, to the 30th June, 1848. You were charged with the following items at the prices annexed thereto, receipted for by you,* to Major Chapman, in the fourth quarter of 1847 and the first quarter of 1848, to wit:

25½ cords of wood, $2 50	$63 50
90 bushels and 20 quarts of corn, at $1 50	136 40
62 bushels of oats, at $1	62 00
26 quires of writing paper, at the rate of $2 96 per 6 quires, &c., allowed a lieutenant	12 82
5,964 lbs. of hay, at 1 cent	59 64
Rent for five rooms 13 months and 23 days, at $5 per month per room	343 50
	677 86

Per vouchers 26 and 27 B., third quarter, 1848, Major Chapman paid J. Mesa $605 15 for the rent of seven rooms occupied as quarters and offices by yourself and Lieut. McLean, from March 1, 1847, to August 9, 1848. By the regulations, you were entitled to four of them as quarters and one as kitchen, with which you have been charged, not including the offices. If any error has been committed the proper correction can be made whenever it is discovered, whether for or against the United States.

Your letter of the 21st, written the day after the one to which the foregoing is a copy, was duly considered, and, in view of the difficulty of the question it raised "the interpretation of the word, emolument," referred to the Second Comptroller of the Treasury for his decision, to which an answer has been given of this date, to the following effect. I have to acknowledge the receipt of yours of the 22d instant, inclosing a letter from Col. Wm. Davenport, in relation to a charge recently made against him by direction of the Secretary of War. No new facts are presented by Col. Davenport in reference to this charge, and I see nothing in the argument contained in his letter that should induce any change in the present statement of his accounts.

E. J. PHELPS, *Comptroller.*

*I would here note, that the receipts thus referred to are those given by me to the disbursing officer, which are merely acknowledgments of the items received from him, and are used by him as vouchers in settling his accounts with the department.

This decision disposes of the question in regard to what is considered emoluments. The correctness of the present charge, in its details, I do not doubt, will be admitted on further inspection.

I am, very respectfully, your obedient servant,

JNO. S. GALLAHER,
Third Auditor.

Col. WM. DAVENPORT,
Philadelphia, Pa.

Copy of a letter to the Third Auditor.

PHILADELPHIA, PA., *June* 21, 1852.

SIR: Your letter of the 16th instant came to hand on the 17th, and, in compliance therewith, I have the honor to acknowledge that I have received a treasury draft for two thousand one hundred and ninety-four dollars and sixteen cents, ($2,194 16,) it being a *part* of the *sum* due me for the collection of military contributions in Mexico, and I forwarded to J. Sloan, Esq., Treasurer of the United States, on, I believe, the 15th instant, my receipt for the same. I further acknowledge to have received this day, 21st, a treasury draft, dated 19th instant, for two hundred and thirteen dollars, thirteen cents, ($213 13,) it being my military pay for the month of January, 1850, which has been, as you may see, unwarrantably withheld from me for nearly two years and a half; and for this sum I have likewise forwarded, this day, to J. Sloan, Esq., Treasurer of the United States, my receipt.

I am, sir, very respectfully, your obedient servant,

WM. DAVENPORT.

JOHN S. GALLAHER,
Third Auditor, Washington, D. C.

PHILADELPHIA, PA., *November* 3, 1855.

SIR: I have the honor to acknowledge the receipt of your favor of the 31st ultimo, in reply to my letter of the 25th, in which you say: "My claim has been long since disposed of, and is now no longer before the department, and, therefore, there is nothing for the department to refer to the Attorney General." On several occasions I have endeavored, but it seems I have not succeeded, to bring the notice of the War Department to what I honestly regard as a just and legal claim against the government; and have stated, with some care, the laws upon which each item of it is based. With all this before you, it has been your pleasure to reject it; but you have not supported your rejection by any precedent or judicial opinion whatever, and I am not aware that any exist. You have only said that my account is closed, and cannot be re-opened; and, in effect, you say the same in

your letter now before me. I must attribute to forgetfulness on your part that you should give this as a reason for rejecting my claim, after you have been so truly informed, in his very words, that the Third Auditor assured me that errors, if any should be found on either side, would be corrected; that I declined for, perhaps a year, to accept what was offered, and continued to decline it, until again assured by the chief clerk that it would be no bar whatever to my claim for the balance; and finally, what I did receive, I receipted for as a part of my claim. You will perceive, therefore, that it was understood at the time by both parties that the account was not closed. But upon the payment of a part of my claim you insist upon a credit for the whole, a doctrine altogether new; at any rate I never heard it advanced before. I think the government does not wish the just claims of her citizens settled in this way.

You oppose my claim; your motive I do not question, but you give me nothing which amounts to the dignity of a reason for rejecting it. My respectful request that you refer it to the Attorney General, you refuse, whose department you know is established for the purpose of settling disputed or conflicting questions; and every citizen has a clear right, in all such cases, to the benefit of it. For this reason I have requested my claim submitted to this tribunal, with the expectation that it would be there disposed of in accordance with the laws, and its own merits. This is all I have at any time wished, and it is for this only that I have asked your assistance. And by way of apology for the trouble I have given you, allow me to assure you that I have said much more to you upon a matter of my own than I would have done could I have referred directly to the Attorney General.

I have the honor, sir, to be, very respectfully, your obedient servant,

WM. DAVENPORT.

Hon. JEFFERSON DAVIS,
Secretary of War, Washington, D. C.

If my claim is sustained by the Court, the amount to be returned me, with interest, is:

For wood	$63 50
For forage	256 04
For house rent, for a house in public use only	343 50
And for the hire of servants, as allowed by law	370 37
	1,033 41
Add interest from	

No person, except myself, is now or has been in any way interested in my above stated claim.

All of which is respectfully submitted.

WILLIAM DAVENPORT.

PHILADELPHIA, *July* 8, 1856.

STATE OF PENNSYLVANIA, }
City of Philadelphia, } *ss.*

William Davenport, abovenamed, being duly sworn, says that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

WM. DAVENPORT.

Sworn and subscribed before me this 10th day of July, 1856.

DAVID PAUL BROWN, jr.
United States Commissioner.

COURT OF CLAIMS.

COLONEL DAVENPORT'S PETITION.

The claim of Colonel Davenport, the facts and statutes on which it is based, the correspondence concerning it, the errors made by the department, and, indeed, all the evidence of the case are so fully stated in the petition that it is considered unnecessary to offer any argument on its behalf. But the attention of the Court is respectfully invited to the following points:

I. Colonel Davenport's accounts were adjusted and approved by the President, (*p.* 3.) By the 2d section of the act of 1849, (*Stat. at Large, IX*, 413,) the *President* and not *the Secretary at War* is authorized to allow, &c. It is submitted that it was not competent for the Auditor (*see his letter, p.* 7) to reopen the matter after this adjustment and approval, and after the settlement in his [the Auditor's] own office, which followed the adjustment and approval.

II. The response of the department (*p.* 10.) "that the claim was disposed of," "and there is nothing to refer to the Attorney General," may be a very convenient mode of settling claims, and one thoroughly warranted by the practice of the department, but it will not avail in a court of justice as a defence, when the claimant is assured in writing (*p.* 8) that "if any error is committed, the proper correction can be made, whether for or against the United States."—(*See also pp.* 10, 11.)

III. The last defence of the department is the one just mentioned. The first seems to have been, that the items objected to "were receipted for" by Colonel Davenport.—(*Auditor's letter, p.* 8.) This was a mere quibble, for, as mentioned, (*p.* 8, *note*,) "these receipts" are mere "vouchers" to "be used by the disbursing officer in settling with the department." "Receipts" are given by officers for arms, medicines, clothing, &c., for their commands; but, *except in this particular case*, these "receipts" or "vouchers" have *never* been relied on as they are by the Auditor here. It is confidently believed that the records of the department cannot furnish another such case. In a word, Colonel Davenport is nowhere charged with the misapplication of any part of the public property for which he receipted; and, hence, it does not

appear that the government has suffered any loss; and the receipts, therefore, are no authority for charging him with any part of the cost of it.

IV. It will be borne in mind that the Auditor gives neither reason nor authority for his decision as to the disputed items. It is proper, therefore, to ask, why were these very items allowed in other cases, General Scott's, for example, and rejected in this?

In General Scott's case, (*See Senate documents, No. — February* 4, 1857, *p.* 12,) $1,036 25 allowed for quarters in Washington whilst he was in Mexico; and (*p.* 25) $583 33 allowed for his quarters for two and one-third months in Mexico.

Why should the $343 50 for rent of "house in the public service only" be disallowed to Colonel Davenport? A law cannot be just which does not bear alike upon all.

Pages 45–6, General Scott was allowed $6,149 86 for collecting, &c., in Mexico, and no deductions made from his pay. But in Colonel Davenport's case, the allowance made for his collections, &c., *was* deducted as "pay and emoluments." Is this "even-handed justice?" Why should one interpretation be given to the act of 1849 in Colonel Davenport's case, and the directly opposite interpretation be given in General Scott's?

V. The other two items in dispute are "forage" and "hire of servants." As to these, the following observations are submitted:

"Forage, it appears, was given to mounted officers without obliging them to keep their own horses in the public service up to the 22d of July, 1813. To that time it may be presumed they were expected to be mounted at their own expense, when the public duties required it. This we may believe, because we find provision made by law before that time, for paying for private horses killed in battle. Up to *this* time forage might have been an emolument, as rations now are. But the system of granting gross sums for forage was changed by the acts of 1813 and that of the 24th of April, 1816. After these acts, mounted officers, as will be seen by reference to them, were required to keep in the public service their own private horses, and forage was given as a just compensation for the public use of them. In my petition before the honorable Court, I have undertaken to show, and I hope I have done so to the satisfaction of the courts, that under the existing laws forage must be intended as a just compensation for the public use of private property. Private servants were introduced into the public service upon the authority of the law above referred to, and we find in these acts provision made for paying for the public use of them. We were at war in 1813, and the object of the act of that year was clearly to prevent weakening the line of the army by the employment of soldiers as waiters. I think it will be found that this was given as a reason for the change. The conditions upon which the private horses and servants of officers were introduced into the public service are clearly enumerated, and so long as these conditions remain unfulfiled, just so long will the claimant be kept out of the just compensation to which he is entitled by the laws of the country. I really cannot perceive any more authority in the act of the 3d of March, 1849, for stopping the compensation for the public use of Col. Davenport's

private horses and servants, than for the stopping of his income for the hire or rent of any other property he holds. The War Department has not been very consistent in its action upon the law. It seems that General Scott was also a collector of military contributions, and as such an allowance is made him in the settlement of his accounts, of $6,147 86, and no deduction whatever made for fuel, quarters, forage, or servants, or indeed on any other account.—(Page 141.) In the first no more is claimed than the law authorizes. In the other the law is a dead letter."

VI. Section 3, act March 3, 1849, provides for the payment of this claim, if allowed by the Court.

PHILADELPHIA, *September* 8, 1857.

IN THE COURT OF CLAIMS.—No. 687—LAW DOCKET.

WILLIAM DAVENPORT *vs.* THE UNITED STATES.

Solicitor's Brief.

During the war with Mexico, the petitioner, then a colonel in the army of the United States, was stationed at Matamoras, in Mexico, and there superintended the collection of duties imposed, as a military contribution, upon the commerce with that port.

By the 2d section of an act approved March 3, 1849, (9 Statutes, 412,) each military officer performing such duty was entitled to a compensation to be "assimilated in amount as nearly as may be, including the regular pay and emoluments of such officer, to that allowed by existing laws to officers of the customs in the United State where th services are similar in amount and importance; such allowance in a l cases to be determined by the President of the United States.

In settling the account of Colonel Davenport under this act, the following items were computed to be part of his pay and emoluments, and as such, deducted from the amount to be paid him:

Cash paid him in lieu of forage.

Cash paid him for wages of his servants.

Cost of rooms rented for his use.

Cost of fuel furnished to him.

The petitioner claims that these sums formed no part of his pay or emoluments, and alleges that they were improperly deducted from the amount payable to him.

I. The compensation of a colonel of infantry is made up of the following items: pay, rations, servants' wages, and clothing, forage for horses, quarters, and fuel.

The first two items, pay and rations, are always paid in money, and unconditionally.

The third and fourth items, for servants' wages and clothing, and forage for horse, are paid in money, at a rate fixed by law, on condi-

tion that he actually employs the servant, and owns and keeps the horse.

The fifth and sixth items, quarters and fuel, are furnished in kind, (rooms and wood,) or an equivalent paid in money, at the option of the government. These last allowances are absolutely discretionary with the President; the officer may have a fine house to himself, or share a tent with a crowd, just as the President wills or the necessities of the service require.

The last mentioned four items are those which the petitioner denies to be emoluments; the first two he admits to be pay and emoluments.

There is no law which requires a colonel of infantry either to keep a servant or own a horse. But he has a position to hold as a gentleman, and duties to perform as an officer, which cannot be held and performed unless he do both; and if he should fail for a length of time to keep either, he would probably be found delinquent in some particular, which would cause the loss of his commission. Whether, therefore, the government made him an allowance for the expense or not, he would be equally compelled to incur it just as he is compelled to have proper weapons and clothing, for which government makes him no special allowance; and the amount of the allowance made for servant and horse is as much a relief to the officer's purse as if the same amount were added to his pay.

As to quarters and fuel, the case is not quite so self-evident, but the conclusion is equally certain. The officer is charged with only cost price of the rooms he occupied, and the fuel that he burned. The shelter and warmth supplied are necessities of the same class as his clothing or his food; and it is difficult to see on what ground he draws a distinction between the allowance made for food and the wood to cook it with, admitting the ration to be an emolument, and claiming that the wood is not.

That such allowances have always been considered as emoluments, appears from opinions given by the Attorney General on the 10th of June, 1807, (1 Opinions, 160,) and June 30, 1821, (Id., 475.) And I may state as a fact that will not be denied, that when brevet officers are assigned to duty according to their brevet rank, they receive the quarters and fuel as among the emoluments to which they are entitled under the act of April 16, 1818, (3 Stat., 427.)

II. But the President, in settling the account of Colonel Davenport, was required to assimilate his compensation, including his pay and emoluments to that of a collector. The law does not say he should have a sum certain or capable of being ascertained, and that his pay and emoluments should be deducted therefrom; but the statute requires the President to *assimilate* the pay, &c., and has given the President absolute discretion to determine the "allowance" to be made to the petitioner. If the petitioner be allowed to recover in this suit, he will receive more than the President has chosen to allow him under that statute. He has already received under the act of 1849, such an allowance as the President determined, in order to assimilate his pay to that of a collector of the customs performing duties of equal importance; and having received that, he will, if he recover in this suit, receive something more under that act. It is sub-

mitted that the President's determination under that act is the limit beyond which the allowance to the petitioner cannot go, and that to suffer him to recover in this suit would be to go beyond that determination.

It may be argued for the petitioner that the "allowance" made by the President was the gross compensation assimilated to that of a collector, and that the amount to be deducted forms no part of the allowance to be determined. But such is not the effect of the act. Its effect, in fact, is to give the officers such sum in addition to the pay and emoluments he has received as will make up his compensation to the maximum specified. The "allowance" to be determined is the difference to be paid.

JOHN D. McPHERSON,
Deputy Solicitor.

IN THE COURT OF CLAIMS.

WILLIAM DAVENPORT *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

During the war with Mexico the petitioner, who was then a colonel in the army of the United States, performed the duties of collector at the port of Matamoras, in Mexico, from the 9th day of May, A. D. 1847, to the 30th day of June, A. D. 1848. Under the second section of the act of Congress approved March 3, A. D. 1849, ch. 126, (9 St. at L., p. 413,) he became entitled to be allowed a compensation therefor, to be assimilated in amount as nearly as may be, including his regular pay and emoluments, to that allowed by the then existing laws to officers of the customs in the United States where the services were similar in amount and importance; "such allowance, in all cases, to be determined by the President of the United States." He now complains that in the settlement of his accounts the cost of wood, forage, quarters, and servants, was considered a part of his "regular pay and emoluments," and, therefore, deducted from the amount allowed him. He insists that the expense incurred for these things constituted no part of his *regular pay and emoluments*, and ought not to have been taken into the estimate by the President in determining the amount to be allowed him as collector.

It was clearly the duty of the President, in determining the allowance to be made to the petitioner for his services as collector at Matamoras, to assimilate his compensation in amount, including his regular pay and emoluments, as nearly as may be, to that allowed by the existing laws to officers of the customs in the United States for services similar in amount and importance. The simplest method of performing this duty probably was, first to ascertain what would be the compensation of an officer of the customs in the United States for such services, and then deduct therefrom the petitioner's regular pay and emoluments. The difference would be the amount to be paid him

as collector, and he might then be allowed to receive his regular pay and emoluments *as such*. The whole would be the compensation contemplated by the second section of the act of March 3, A. D. 1839. But the law submitted the whole matter to the President's discretion, and he was fully authorized to adopt any method of disposing of it which to him might seem expedient, and his action thereon was conclusive. The law in express terms required that the petitioner's allowance should be determined by the President. He did determine it, and his determination conclusively settled it.

No order will be made directing testimony to be taken in this case.

35TH CONGRESS, 1st Session. } SENATE. { MIS. DOC. No. 248.

IN THE SENATE OF THE UNITED STATES.

MAY 4, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

J. H. WAGGAMAN *vs.* THE UNITED STATES.

1. The petition of the claimant and amendment.
2. Account showing the amount claimed.
3. Report of the Commissioner of the Land Office to the Secretary of the Interior, with documents therein referred to, and the reply of the Commissioner of the Land Office to the order of the Court of Claims, with copies of letters relating to the claim, transmitted to the House of Representatives.
4. United States Solicitor's brief.
5. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this third day of May, A. D. 1858. [L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

UNITED STATES COURT OF CLAIMS.

JOHN H. WAGGAMAN *vs.* THE UNITED STATES.

PETITION.

To the honorable the United States Court of Claims:

The petition of John H. Waggaman, late a clerk in the General Land Office, respectfully shows: That, prior to the 13th of January, 1845, and to that day, he was a clerk in the General Land Office,

under an appointment of the Commissioner thereof, at a salary o $1,200; that on the day above designated he was promoted to a clerkship at a salary of $1,300, by a formal official notice from the Commissioner that one hundred dollars had been added to his salary, to take effect from that date. Said notice of that promotion was in the form and words following, viz:

GENERAL LAND OFFICE, *January* 13, 1845.

SIR: One hundred dollars have been added to your salary, to take effect from this date.

THO. H. BLAKE,
Commissioner.

Mr. JOHN H. WAGGAMAN,
General Land Office.

Your petitioner also states that this notice, or letter of promotion, so given and received, was made a matter of record, and was never withdrawn or abrogated till the General Land Office was reorganized the 1st of July, 1853, under the act of 3d March, same year, and he received a new appointment; that, notwithstanding this formal and unequivocal promotion, the department continued to pay the petitioner thereafter, just as he had been paid before, at the rate of $1,200 per annum only, which he received and receipted for as usual for so much only, without intending thereby to relinquish or in any degree to impair his right to the one hundred dollars per annum which had been added to his salary of $1,200, as aforesaid.

And further, your petitioner states that, having presented his account for the arrears of pay due to him from the 13th of January, 1845, to the 1st of July, 1853, a term of 8 years and 5 months and 13 days, amounting to the sum of $845 03, and payment of the same having been refused, he is constrained to seek relief at the hands of this honorable court.

And furthermore, the petitioner states that his claim is founded upon the 10th section of the act of Congress approved the 4th day of July, 1836, "to reorganize the General Land Office," (*see Statues at Large, L. & B., vol.* 5, *p.* 112,) whereby the Commissioner was authorized to appoint clerks in his office, of certain grades of salaries, and among them sixteen clerks, at salaries of $1,300 each; and the records of his department show that, in 1844, and to the 13th day of January, 1845, that class of clerks, as to the number he was authorized to appoint, was incomplete; and consequently, when he promoted your petitioner from a clerkship of twelve to one of thirteen hundred dollars, he had ample power so to do.

And now, in conclusion, justice having been denied him, as aforesaid, the petitioner respectfully prays the honorable Court of Claims for a decision in his favor for the amount claimed by him.

J. F. POLK,
Counsel for Claimant.

UNITED STATES COURT OF CLAIMS.

JOHN H. WAGGAMAN *vs.* THE UNITED STATES.

Brief.

This is a claim for arrears of compensation due for services rendered as a clerk in the General Land Office. It seems that the claimant was promoted, as set forth in his petition, but never received the amount he was officially informed had been added to his salary; and for this it is he brings this action.

The Commissioner of the General Land Office, by letters filed in this case, admits that the claimant was a clerk in that office, at a salary of $1,200, prior to the 13th of January, 1845, and that on that day he was officially notified that one hundred dollars had been added to his salary, to take effect from that date; and the 10th section of the act of Congress of the 4th of July, 1836, "to reorganize the General Land Office," (Statutes at Large, vol. 5, p. 112,) invested the Commissioner with power to appoint sixteen clerks, at salaries of $1,300 each.

When the claimant was notified that an addition of one hundred dollars had been made to his salary, then $1,200, the number of clerks in the General Land Office, at salaries of $1,300 each, was short of sixteen. Hence, the Commissioner was at liberty to make up the number, if he saw fit, by appointment or promotion.

Now the legal points, &c., relied on to maintain this case are:

1. That the promotion of a clerk in any department of the general government is tantamount to an appointment.

2. That an official letter from an officer vested by law with appointing power, informing a clerk in his office that a certain sum has been added to his salary, to take effect from a certain day, and which sum increases his salary to an equality with others of a grade or class within the appointing power of such officer, and where such class, in respect to the number authorized by law, was not previous thereto complete, *is a promotion*, and equivalent to an appointment.

3 That an official letter of promotion or appointment cannot be withdrawn or abrogated unless the person promoted or appointed thereby is officially notified thereof.

4. That a notification of the withdrawal or abrogation of a letter of appointment or promotion is not official, unless it be in writing and signed by the officer having lawful authority to make such abrogation, &c.

5. That the receipts of a clerk, who has been promoted, for payments made to him at the rate of his former salary, and his acceptance of such sums, do not constitute a bar to his claim to the additional amount to which his promotion entitled him, without an express agreement to that effect.

But payment of Mr. Waggaman's claim is refused at the department on the ground that the notification he received, that one hundred dollars had been added to his salary, "appears not to have been carried

into effect, but withdrawn, as the record of his salary account shows that he was set down at only $1,200, to July, 1853, which was accepted and regularly receipted for by him as in full."

Now, that the notification aforesaid was not carried into effect is the very reason why the claimant makes his complaint; and as to the record of his salary account, it is manifestly a false record, for immediately on his promotion it should have been changed to $1,300, in lieu of $1,200; and his accepting the latter sum, and receipting for the same as formerly, was only in full for so much. And he feels assured that this honorable court will not permit the department to take advantage of its own wrong to the prejudice of his rights.

These points and facts are respectfully submitted for the consideration and decision of the honorable the Court of Claims.

J. F. POLK,
Counsel for Claimant.

JOHN H. WAGGAMAN *vs.* THE UNITED STATES.

To the United States Court of Claims:

The petitioner having been permitted by the court to amend his petition, and allowed a rehearing of his cause, further respectfully states, that—

The fear of losing his office prevented him from urging his claim as importunately as otherwise he would have done; but that he did assert it from time to time with as much vigor and perseverance as prudence, in his judgment, would justify, was well known in the department, both to the Commissioner and his clerks.

That he brought the case directly to the notice of General Shields, Colonel Blake's successor in office, and asked him if, to deprive the petitioner of his right to the amount of his claim, which was based on a matter of record in his office, it were not necessary that it should be cancelled by an official communication addressed to him in writing; to which, no reply was ever made to the petitioner either orally or in writing.

That afterwards the petitioner called the attention of the chief clerk, John Wilson, esq., to the claim, and he, likewise, forbore to express an opinion or to give any advice touching the question.

That he brought it to the notice, also, of Commissioner Butterfield, and told him, in express terms, that "if the government could be sued he would ask no favors, but would make it pay him;" that Mr. Butterfield also treated his demand with silence and neglect.

That fearing, as stated above, that if he pushed his claim any further he might give offence, and would consequently be removed from office, and hoping that in the course of events there might be an accession to the department of a head disposed to do him justice, he, contrary to the advice of many of his fellow-clerks, who were cognizant of the whole matter, said no more about it, and waited for the ar-

rival of that hoped for more auspicious season, which seemed, indeed, to be realized in the organization of this honorable court.

The petitioner further states, in reference to the signing, after his promotion, of those receipts for monthly payments at the rate of $1,200 per annum, the amount of his salary previous to his promotion the 13th of January, 1845, and which affirm to be in full of all that was due to him, that they consisted of common receipt rolls for all the clerks in the office to sign. That his salary being absolutely necessary for the support of his family, he was actually constrained by necessity to sign any receipt and to accept whatever sum of money was on each occasion tendered him, believing, however, at the same time, that a receipt was but *prima facie* evidence of payment, and that the payment of a sum designated is not, of itself, a positive discharge of a debt for a larger amount, although the terms of the receipt be in full; and he further declares that it was far from his intention, by the constrained signing of those receipts, to relinquish his right to the additional sum allowed him by Mr. Commissioner Blake, as aforesaid.

And he will pray, &c.

THE UNITED STATES,

TO JOHN H. WAGGAMAN, DR.

To increase of salary, under letter of Commissioner of the General Land Office, dated January 13, 1845, at the rate of one hundred dollars per annum, for services rendered, from January 13, 1845, to July 1, 1853, being eight years, five months, thirteen days, at one hundred dollars per annum, amounts to.....	$845 03

WASHINGTON CITY, D. C., *April* 5, 1856.

IN THE COURT OF CLAIMS.

ON THE PETITION OF JOHN H. WAGGAMAN.

Brief of the Solicitor.

This claim is founded on a letter of the Commissioner of the General Land Office, dated January 13, 1845, notifying him that one hundred dollars was added to his salary, to take effect from that day.

Waggaman continued in the Land Office for eight years afterwards, and received only $1,200, and receipted for that as being in full of his pay, &c.

The present Commissioner says that there were then 16 clerks receiving thirteen hundred dollars per annum—all that were authorized by law. It is said, however, that the annual reports show the contrary, and vol. 4, 1st sess. 29th Congress, H. Ex. Doc. 99, p. 27, is offered to show that Hendricks was mistaken. But it is probable that

the entry in relation to Mr. Wood, where he is set down as receiving $1,150 per annum, is a mistake, because, if he was of that grade, his name could not have appeared at the head of the $1,300 clerks.

This table also shows that Waggaman was but a $1,200 clerk, and there can be no doubt about the fact that he was never, in fact, a clerk at the rate of $1,300. It is immaterial what the reason was; whether, as Hendricks says, because there was no vacancy at the date of Blake's letter, or some other cause not made known to the court. It is enough for the court to know that he never entered upon that clerkship, and continued in the other clerkship till the end of his service. The court has been made acquainted in Page's case with the fact that a change of clerkship is indicated only by the assignment of a different salary as a clerk; and if the fact were true that Mr. Waggaman had not only been notified that he was to receive $1,300, and had actually received such a salary for a given period, but was afterwards put upon the lower grade, ($1,200,) this would be conclusive evidence that he filled a $1,200 clerkship, and not a $1,300 clerkship; and it is not of the least legal consequence to know why the discontinuance of the higher salary took place. The fact that the party received the pay annexed by law to a certain clerkship is, under the course of business in the departments, the evidence of his filling that clerkship, as there are no specific duties assigned to the different grades, and those who perform the same duties often receive very different rates of pay.

M. BLAIR.

JOHN H. WAGGAMAN *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the court.

This is a demand against the United States for arrears of pay alleged to be due the claimant as a clerk in the General Land Office from the 13th of January, 1845, to the 1st of July, 1853—a term of eight years, five months and thirteen days, amounting to the sum of $845 03.

The facts proved are as follows:

For some time immediately preceding the 13th of January, 1845, the claimant was a clerk in said office at a salary of $1,200. On that day he received from the Commissioner of the office the following letter:

"GENERAL LAND OFFICE, *January* 13, 1845.

"SIR: One hundred dollars have been added to your salary, to take effect from this date.

"THO. H. BLAKE, *Commissioner.*

"Mr. JOHN H. WAGGAMAN,
"*General Land Office.*"

In 1836 an act of Congress was passed, which was in force at the date of the above letter, authorizing the Commissioner of said office to employ clerks at different salaries, and among them sixteen clerks, at salaries of $1,300 each.—(5 Stat. at Large, pp. 111, 112, § 10.)

On the 12th of June, 1856, the claimant's attorney wrote to the Commissioner, inquiring as to the number of clerks in the office at $1,300 each on the 13th of January, 1845. The Commissioner's answer states "that, from the pay-rolls made up on 31st December, 1844, and also on 31st January, 1845, it appears that on each of those dates there were sixteen clerks of that class, exclusive of Mr. Waggaman."

It appears, by a communication from said Commissioner to this court, "that no evidence is found that said Waggaman ever demanded his salary at the rate of $1,300 per annum after the 13th January, 1845, but, on the contrary, at the expiration of each month, signed a receipt similar to that herewith furnished whilst he continued in office."

The receipt above referred to by the Commissioner is as follows:

"GENERAL LAND OFFICE, *January* 31, 1845.

"JANUARY, 1845.

"We, whose names are hereto subscribed, acknowledge to have received from R. H. Williamson, pay agent, the sums opposite our respective names, in full payment of our salaries in said office, for the month ending on the 31st day of January, 1845."

In that receipt, the sum opposite the claimant's name is $100.

That receipt and the others of the same kind subsequently given by the claimant whilst he remained in office show very clearly that, notwithstanding said letter of the Commissioner of the 13th of January, 1845, the claimant continued, while in office, to be a clerk at a salary of $1,200.

As the claimant, after said notice, continued for more than eight years to receive, monthly, the $1,200 salary, and to give receipts in full for the same without demanding any more, and as there were in office, when said notice was given, sixteen clerks with $1,300 salaries, exclusive of the claimant, (the whole number authorized by law,) we must presume that the claimant received all he was entitled to.

Our opinion is, that there is no foundation for this claim.

35th Congress, 1st Session. | SENATE. | Mis. Doc. No. 249.

IN THE SENATE OF THE UNITED STATES.

May 4, 1858.—Referred to the Committee on Claims.

The Court of Claims submit the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

WILLIAM B. FITZGERALD *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Three letters from the Secretary of the Navy, with accompanying documents, and two letters from the Treasury Department, with accompanying documents, transmitted to the House of Representatives.
3. George A. Stevens' deposition, offered by claimant, transmitted to House of Representatives.
4. United States Deputy Solicitor's brief.
5. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this third day of May, A. D. 1858. [L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

To the Honorable Judges of the United States Court of Claims:

The petition of Wm. B. Fitzgerald, a lieutenant in the United States navy, respectfully shows: That in April, 1843, while your petitioner was at Rio Janeiro, a midshipman on board the Enterprise, an application was made to Commodore Edward Shubrick, then commanding the squadron, by Captain Gardner, then commanding the brig Chipola, bound to the coast of Africa on a special service, for an additional

officer, and your petitioner was accordingly transferred to the Chipola for duty; that the captain of the Chipola, finding that the discipline of his vessel required an additional lieutenant, appointed your petitioner to take command as second lieutenant, there being then but one lieutenant on board; that your petitioner continued to act in this situation and discharge its duties from the time of leaving Rio, May 1, 1843, until the arrival of the Chipola in the United States, on the 4th of May, 1844.

Your petitioner further shows, that under the act of Congress entitled "An act to regulate the pay of pursers and other officers of the navy," of August 26, 1842, section 12, your petitioner was entitled to the pay of a second lieutenant, for the period aforesaid, and applied for the same at the proper office, but his claim was disallowed by the accounting officers of the Treasury; that he subsequently applied to Congress for relief at the 1st session of the 29th and the 1st session of the 30th Congress, but no action was had upon the claim, and meanwhile, some of his vouchers having been lost, your petitioner has not further pressed his claim before Congress.

Your petitioner further shows that no part of his claim has been assigned.

He prays to be allowed the claim as follows:

Pay of second lieutenant from May 1, 1843, to May 4, 1844, one year	$1,500 00
Deduct pay received for same period as midshipman	400 00
Balance due	1,100 00
Interest	

JOHNSON & COX,
Attorneys.

IN THE COURT OF CLAIMS—No. 623.

WILLIAM B. FITZGERALD *vs.* THE UNITED STATES.

Solicitor's Brief.

This claim is made under the 12th section of an act of August 26, 1842, (5 Statutes, p. 536;) and the claimant, to maintain the claim made in his petition, must show—

1. That he performed the *duty of a lieutenant.*
2. By order of the commander of a *ship acting singly on foreign service.*

He offers evidence to show that he performed the duty of lieutenant in the brig Chipola, by order of the commander of that vessel.

The brig Chipola was a small vessel purchased for the purpose of bringing home the equipments, &c., from the wreck of the United States ship Concord, (Fourth Auditor to Linton, March 21, 1845, and

Commodore Morris to Lieutenant Gardner, February 18, 1843,) and was to be sold when she had effected this purpose. (Commodore Turner to Secretary Henshaw, January 20, 1844.) She was despatched on this business by the commander of the Brazil squadron, from Rio Janeiro, and on completing it returned to that place and reported to the same commander. It was upon this expedition that Midshipman Fitzgerald rendered the service charged for, and by order of the commander of this vessel.

Did he perform the duty of lieutenant?

The evidence on this point is that of George A. Stevens, who sailed in the same vessel as midshipman, and testifies that the claimant was ordered by the commander "to take charge of a watch, which he did, and discharged the duties of a second lieutenant." When asked what duties the claimant discharged as second lieutenant, the witness specifies only that he had charge of a watch, and signed the log-book—duties which, he says, did not belong to a midshipman, but might be performed by a passed midshipman, if so ordered. He adds, it was unusual to allow a midshipman to sign the log-book, or keep a watch.

From this testimony it appears that the duties the claimant performed were such as were not *usually* performed by midshipmen, but the implication is, that they were sometimes performed by them. If this inference be correct, the claimant performed no duty, so far as shown, which a midshipman might not occasionally be required to perform. Certainly a passed midshipman might be required to perform such duties, for so the witness expressly states.

It is presumed that, in the navy, some duties are common to all commissioned officers. Perhaps any officer might be sent on service with a detachment of men in a boat. We read in history of midshipmen, as well as higher officers, commanding boats. The testimony of Stevens indicates that it may be the same with regard to acting as watch officer, and that any commissioned officer is competent to perform such service, and may be properly required to perform it. Stevens does not say that the petitioner was *ordered* to do duty as lieutenant. When questioned on this point, he replies by stating that the petitioner was ordered to take charge of a watch. That this was a lieutenant's appropriate duty appears to be only an opinion of his own.

No evidence has been produced to show that the Chipola was entitled to an additional lieutenant. The table of complements produced is intended "for United States vessels of war." The Chipola was not of this class. (Auditor to Linton, March 21, 1845.)

Was the Chipola "a ship acting singly on foreign service?"

When the act of 1842 speaks of a ship, we must understand a ship forming part of the navy. It is true, as certified by the Secretary of the Navy, in his letter of July 1, 1857, the Chipola was "attached to the navy;" but in the same letter he tells us how—as one of those vessels which the Secretary could buy and sell. I apprehend there is a class of vessels in the navy which the Secretary could not have purchased or built without express authority of law, and could not sell. He has no authority to increase or diminish the

navy. Such vessels constitute the navy, and it is to such vessels that the act of 1842 refers. This view is confirmed by reference to the table of complements put in evidence by the petitioner. From this table it appears that the complement of a brig of war was nine officers and seventy-one men. The Chipola had five officers and twenty to twenty-five men. (Stevens' fifth answer.) With such a force, the Chipola could not have sailed had she been a war vessel, as it seems such vessels were not permitted to sail with less than nine-tenths of the full complement. (See note to table.)

Nor was the Chipola acting singly on foreign service. We know there are foreign stations upon which a naval force is always kept. We have a squadron in the Mediterranean, in the Pacific, and on the "Brazil station." It is also sometimes necessary to despatch vessels abroad on special service. The force for all these stations is detailed by the Secretary of the Navy, and may consist of one or more vessels. I understand the act of 1842 to give pay to officers filling higher grades, by order of the Secretary of the Navy, or of the commander of a fleet, squadron, or single ship despatched from the United States, or acting under orders direct from the department, and do not understand that any commander of a fleet on a foreign station could create an indefinite number of ships "acting singly on foreign service," by dispersing the several vessels of his fleet so that they should be out of sight of each other. By ships acting singly on foreign service we must understand such vessels as the Vandalia, when she was the only vessel on the African station, (Ex. Doc. No. 2, H. R., 1842'-3, p. 532,) or the Dolphin, when despatched abroad singly by the department.—(Ex. Doc. No. 2, H. R., 1841-'2, pp. 350, 399.) The Chipola belonged—if she belonged to the navy at all—to the Brazil squadron, sailed under orders from the commander of that squadron, and reported to him on her return.

A vessel like this—a mere merchant vessel—purchased only for transport duty, and sold when that was done, manned by a force not intended for any warlike purpose, but only to save materials from a wreck, and therefore of a strength apportioned by order of the commander of the squadron, to execute a certain work intended to be done—not to the uncertain exigencies which a national ship must be prepared to encounter—such a vessel certainly comes not within the spirit of a rule which must, in its very nature, have been intended to apply to the navy as a military organization.

When the commander of a "ship acting singly on foreign service" is classed with the Secretary of the Navy, and the commodore of a fleet, in a statute granting equal authority to them all, it is difficult to believe that the description was intended to apply to a little Spanish merchant brig, bought by an officer abroad, and fitted out and manned for the sole purpose of receiving the debris of a wrecked war vessel.

JNO. D. McPHERSON,
Deputy Solicitor.

IN THE COURT OF CLAIMS.

WILLIAM B. FITZGERALD *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

The petitioner states the following case:

In April, A. D. 1843, whilst the petitioner was at Rio Janeiro, a midshipman on board the Enterprise, an application was made to Commodore Edward Shubrick, then commanding the squadron, by Captain Gardner, then commanding the brig Chipola, bound to the coast of Africa on a special service, for an additional officer, and the petitioner was transferred to the Chipola for duty. The captain of the Chipola, finding that the discipline of his vessel required an additional lieutenant, appointed the petitioner to take command as second lieutenant, there being then but one lieutenant on board. The petitioner continued to act in this situation and discharge its duties from the time of leaving Rio, May 1, A. D. 1843, until the arrival of the Chipola in the United States on the 4th of May, A. D. 1844.

The petitioner claims that under the act of Congress, entitled "An act to regulate the pay of pursers and other officers of the navy," approved August 26, A. D. 1842, ch. 26, § 12, he was entitled to the pay of a second lieutenant for the period above mentioned. He applied for the same at the proper office, but his claim was disallowed by the accounting officers of the treasury. He afterwards applied to Congress for relief, but no action was had upon his claim. Meanwhile some of his papers having been lost, he has not further pressed his claim before Congress.

He claims as follows:

Pay of second lieutenant from May 1st., A. D. 1844, one year	$1,500
Deduct pay received for same period as midshipman	400
Balance due	1,000
Interest	

Such is the petitioner's case as stated in his petition.

The facts deduced by us from the evidence are as follows:

The United States ship "Concord" was wrecked on the coast of Africa, and the "Chipola" was purchased for the purpose of being sent for the armament, equipment and stores of the "Concord." On the 18th day of February, A. D. 1843, Commodore Morris, then commanding the United States squadron on the "Brazil station," gave an order in writing to Lieutenant J. M. Gardner to take command of "the brig Chipola," and of the officers and men who had been designated for that vessel and were to be transferred from the ship John Adams as soon as the brig could be prepared to proceed to "the river Lorango and the river Quillimane."—(Letter of Commodore Morris to Lieut. J. M. Gardner of the 18th February, A. D. 1843.)

The "Chipola" was not a *brig or schooner of war*, but a small vessel which was purchased for the purpose already mentioned, and did not have half the number of men allowed to a brig or schooner by the table of complements. (Fourth Auditor's letter to J. A. Linton of March 21, A. D. 1845.) The officers, besides Captain Gardner, were one lieutenant, an assistant surgeon, and three midshipmen, and the crew consisted of twenty or twenty-five men. (Deposition of George A. Stevens.) The "Chipola" made the voyage from Rio to Africa, returned to Rio, and was then sent to the United States. (Letter of Commodore Turner to the Secretary of the Navy of January 20, A. D. 1844.) The petitioner was one of the midshipmen attached to her. He had charge of a watch, and signed the log-book—duties which are not usually performed by a midshipman. A passed midshipman might have performed the same duties, but it was not customary. Captain Gardner told the petitioner to take charge of a watch and that he would give him a certificate that he had performed a lieutenant's duty. (Deposition of George A. Stevens.)

The Fourth Auditor inquired of the Secretary of the Navy whether the "Chipola" was entitled to two lieutenants, and the Secretary informed him that she was entitled to one only. Afterwards, in a letter to John A. Linton, dated May 23, A. D. 1845, the Secretary of the Navy said: "Apart from the reasons assigned by the Fourth Auditor for disallowing the claim, it is sufficient that the brig Chipola, to which Mr. Fitzgerald was attached, could not be considered as 'acting singly on foreign service' within the meaning of the act of Congress of August 26, 1842, but was under the orders of a commander of a squadron, and had been supplied by him with the number of officers of each grade which he deemed sufficient for the service on which she was sent." The Fourth Auditor had disallowed the claim on the ground that the "Chipola" was entitled to but one lieutenant, "and that Lieutenant Love was attached to her during the period in question." (Letter of the Fourth Auditor to J. A. Linton of March 21, A. D. 1845.)

The twelfth section of the act of August 26, A. D. 1842, ch. 206, is as follows: "Whenever an officer shall perform the duty of a higher grade by order of the Secretary of the Navy or the commander of a fleet or squadron or ship acting singly on a foreign service, such officer shall be entitled to receive the pay of such higher grade during the time he performs the duty in that grade and no longer, and no allowance shall be made for performing such service hereafter unless so ordered.—(5 Stat. at L., p. 536.) This section was repealed by the act of June 17, A. D. 1844.—(Ibid, 703, ch. 107, § 3.) It is not pretended that the petitioner performed the duty of a lieutenant on board the "Chipola" by order of the Secretary of the Navy, or by order of the commander of a fleet or squadron. It is equally clear, we think, that he did not perform such duty by order of the commander of a "*ship acting singly on a foreign service.*" The "Chipola" was a *brig*, and not a *ship*. The term "ship," in the act of 1842, was, we think, used not in its *general*, but in its *appropriate sense*, as contradistinguished from a *brig* or *schooner*. It meant, too, a ship

belonging to the navy of the United States, and not a vessel purchased for a merely temporary purpose and employed only for that purpose. The "Chipola," therefore, was a "ship acting singly on a foreign service" in the sense of the act of August 26, A. D. 1842.

Our opinion is, that the petitioner is not entitled to relief.

35TH CONGRESS, 1st Session. } SENATE. } MIS. DOC. No. 250.

IN THE SENATE OF THE UNITED STATES.

MAY 4, 1858.—Referred to the Committee on Claims,

The COURT OF CLAIMS submit the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The COURT OF CLAIMS respectfully present the following documents as the report in the case of

LOGAN HUNTON *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Communication from the Comptroller of the Treasury to the Deputy Solicitor, dated June 19, 1857, with accompanying documents, marked A, B, C, D, E, F, G, H, I, J, K, L, M, and N, transmitted to the House of Representatives.
3. Communication from the Comptroller of the Treasury, addressed to S. S. Baxter, esq., and to the Deputy Solicitor, dated February 16, 1858, with accompanying documents, marked A and B, with certified copy of the First Auditor's statement. A report, No. 2884, transmitted to House of Representatives.
4. Report from Treasury Department, dated May 19, 1853, with statement of the claimant's accounts, and other documents referred to on the trial, transmitted to the House of Representatives.
5. Claimant's brief.
6. United States Solicitor's brief.
7. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this third day of May, A. D. 1858. [L. S.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Judges of the Court of Claims:

The petition of Logan Hunton, of the city of New Orleans, State of Louisiana, respectfully represents:

That in the year 1849 your petitioner was duly appointed and commissioned attorney of the United States for the eastern district of

Louisiana, and the United States are indebted to him for official services whilst acting as district attorney as aforesaid, in the following sums of money, to wit: one of seven hundred and sixty dollars, one of two hundred and seventy-five dollars, and one of five thousand dollars, amounting in the aggregate to the sum of six thousand and thirty-five dollars, ($6,035.) The two first mentioned sums have been audited and allowed by the accounting officers of the Treasury Department, but the payment thereof has been unlawfully withheld from him, as will more fully appear by the exhibits herewith filed, marked 1, 2, 3.

Your petitioner further states, that the sums of $1,180, of $2,200, and of $500, referred to and charged against him on the report of Seaman, Acting Comptroller, marked exhibit No. —, are erroneously charged; and the attempt to make petitioner a debtor to the United States in the said sums or any part thereof is unjust, arbitrary, and without the authority of law. He believes that the suggestions of law in said report are unsound, and the suggestions of fact are untrue. He denies the right of the United States to offer these sums as a set-off against the debt due to petitioner.

He further states that the above named sum of $5,000 is justly due to petitioner for services rendered in the district and circuit courts of the United States held in the eastern district of Louisiana in the cases of United States against Narcesso Lopez, John Henderson, and others, for a violation of the neutrality laws. The prosecution against Narcesso Lopez was instituted by order of the President of the United States; the other followed in the usual course of proceeding by the grand jury of the district aforesaid. They were of an extraordinary and exciting character, involving legal questions of difficulty, and requiring great labor in their conduct and preparation. The judge who presided at the trials, which were exceedingly protracted, and who witnessed the services rendered by your petitioner, taxed for his fees in the said cases the sum of five thousand dollars, and certified it to the treasury; and according to the custom which had been pursued by the predecessors of your petitioner in similar cases, the said allowance so made and taxed by the judge aforesaid, was submitted to two of the judges of the district courts of the State of Louisiana, who certified that the same was reasonable and proper, according to the rate of charges for such services in the district courts of Louisiana, and members of the bar of New Orleans also certified that the said sum so charged was reasonable; all which will more fully appear by reference to a copy of the said account with the said certificates, herewith filed, the original thereof being in the office of the Comptroller of the Treasury. He further states that payment of the said sum was refused by the Comptroller upon the ground that there was no law of the United States which authorized any allowance or payment to the attorney of the United States in the eastern district of Louisiana for services in criminal cases. Upon the refusal by the Comptroller your petitioner applied to the Secretary of the Interior, who had, as he was advised, supervision and control of the subordinate officers of the Treasury Department in such cases, and after due consideration the said Secretary, by his written order dated August 6, 1852, (a copy of which is now here shown to this honorable court,) ordered payment of said sum to

be made to your petitioner; notwithstanding all which payment was refused, and is still refused to your petitioner upon the grounds above referred to.

Petitioner respectfully refers to the following statutes, amongst others, to show that the said sum of $5,000, as well as the said several sums which he from time to time received from the marshal for his fees *in criminal cases,* were lawfully payable to him.

The 35th section of act of Congress approved September 24, 1789, 1 S. L., page 92, directs that a district attorney shall be appointed, and he shall receive as compensation for his services such fees as shall be taxed therefor in the respective courts in which the suits or prosecutions shall be.

The 4th section of the act of 8th May, 1792, 1 S. L., 277, directs the legal fees of the clerk, attorney, and marshal in criminal prosecutions to be included in the account of the marshal, and the same, having been examined and certified by the court or one of the judges of it in which the services shall have been rendered, *shall be passed* in the usual manner at, and the amount thereof paid out of, the treasury of the United States to the marshal, and by him shall be paid over to the person entitled to the same.

The 4th section of the act of 1799, 1 S. L., 625, fixes the compensation of attorney, and gives in each State the fees which are allowed in the supreme court of the State.

By the 5th section of the same act, it was enacted that for all services in criminal cases performed by the attorney for the district of Virginia, and for which no fees were allowed by law in the courts of that State, he should be allowed such sum or sums as the court in which they were rendered should consider a reasonable compensation therefor; and your petitioner is informed that in Virginia no fees were by law allowed in the supreme court thereof in criminal cases.

In Louisiana no fees for services in criminal cases in the supreme court are taxed by law; but the act of 1789 having provided for the payment of such fees to the district attorney as should be taxed by the court, and the act of 1792 having allowed the fees of attorney, and the act of 8th April, 1812, admitting Louisiana into the Union having recognised the right of the district attorney to fees, it has until recently been uniformly held and admitted by the courts and by the officers of the Treasury Department, that the attorney of the eastern district of Louisiana was entitled to such fees in criminal cases as the court in which the services were rendered should consider a reasonable compensation, and should tax in his account.

Petitioner, in consideration of the premises, prays for judgment for the said amount of six thousand and thirty-five dollars, with interest on the sum of $5,000 from the 5th August, 1852, and on $760 from the 19th May, 1853, and on $275 from the 6th January, 1854; and he prays for general relief in the premises.

LOGAN HUNTON.

STATE OF KENTUCKY, }
Boyle county, } *sct.*

This day Logan Hunton personally appeared before me, the undersigned, a justice of the peace in and for the county aforesaid, and made

oath that the facts stated in the foregoing petition are true, to the best of his knowledge and belief, and that he has never assigned the above-mentioned claim or demand to any person, the same being now justly due to him.

Given under my hand this 8th day of September, 1855.

SPEED S. FRY,

Presiding Judge of Boyle county, and ex-officio Justice of the Peace.

IN THE COURT OF CLAIMS.—No. 457.

LOGAN HUNTON *vs.* THE UNITED STATES.

Brief of the United States Solicitor.

The petitioner, late United States attorney for the eastern district of Louisiana, claims from the United States the sum of $5,995; the treasury claims from the petitioner the sum of $2,885: the difference is $8,880, and arises as follows:

The treasury officers have charged to the petitioner three sums of money, $1,180, $2,200, and $500, paid to him by the marshal of his district out of public moneys, as they say, erroneously	$3,880
And they refuse to pay him the amount charged by him for his fees in certain criminal cases tried in the district court	5,000
	8,880
Or, otherwise, the treasury accounts represent him as debtor for $3,880, received erroneously as above, and credit for $1,035, since allowed for other items, leaving balance due	2,845
The petitioner's account charges $5,000 for services as above, and $1,035 for the said items admitted by the treasury	6,035
Making the amount involved in this suit, as above	8,880

I. *Respecting the three items paid by the marshal, amounting to* $3,880.

The act of May 8, 1792, sec. 4, (1 Stat., 277,) provides that the legal fees of the district attorney, &c., having been examined and certified by the court or one of the judges, shall be passed, and the amount thereof paid out of the treasury to the marshal, and be by him paid over to the persons entitled.

Nevertheless, it appears that in practice the marshals had been accustomed to pay the compensation of the attorneys, &c., before the same had been passed at the treasury, and that pursuant to ths practice the marshal of the eastern district of Louisiana, paid to the district attorney, among other bills, the three which constitute the above

sum, between the 31st of December, 1849, and the 8th of January 1851.

On settlement of the marshal's accounts, the Comptroller refused to admit these payments as proper disbursements from the public moneys in the marshal's hands, but subsequently, in May, 1853, he decided to credit the marshal by charging the amount to the district attorney; in other words, to consider the latter liable for the amount, as for money had and received to the use of the United States, being paid to him by an agent of the United States through mistake, and without authority.

Upon these items, three questions arise:

1st. Was the district attorney legally entitled to demand payment thereof from the United States?

2d. Was the marshal in either case authorized to pay them?

3d. If not, can the amount paid be recovered back from the district attorney?

As to the first question. The charges are for attending fifteen examinations before United States commissioners in criminal cases, $1,570 (one at $1,000, one at $350, one at $100, and twelve at $10;) for attending one examination before the United States district judge and United States commissioner, $500; and for trying fourteen criminal causes in court, $1,810.

No express provision was made by law prior to 1853 for compensating attorneys for services in attending examinations before United States commissioners. If it was the duty of the United States attorney to attend such examinations, or if he chose to attend and act officially on such occasions, his compensation was found in the annual salary attached to the office. The smallness of the salary is no argument against this view. The annual salary of a public officer, it is contended, must be considered as his compensation for all services rendered as such officer, and for which there is no other allowance given or promised by law; and the act of February 28, 1799, sec. 4, (1 Stat. 625,) expressly declares, that the salary of the district attorney is "a full compensation for all extra services," meaning by "extra" those for which no stated compensation is provided in said section.

The same reasoning applies to the examination which was held before the district judge and United States commissioners.

Some reliance seems to be placed by petitioner upon a certificate of the district judge stating that he has examined the bills, that the charges are reasonable, and that he has allowed them, but no authority is shown for the judge to examine or certify accounts for services not rendered in his court—these services not being rendered in his court.

For the prosecutions conducted in court, a paragraph in the annual appropriation act of March 3, 1841, (5 Stat. 427,) authorized the attorneys to receive such fees as were allowed in the highest courts of the States in which the services were rendered; and for any services performed by said officers in the performance of their official duty for which no compensation is provided by the laws of the State, they should receive "such fees as are now allowed by law according to the existing usage and practice of said courts of the United States."

The district judge has in this case also certified that the fees charged by the attorney are reasonable, and that he has allowed them. This allowance the petitioner contends is conclusive in his favor.

The only authority under which the certificate could have such effect is the act of September 24, 1789, sec. 35, (1 Stat. 92.) That act, it may be admitted, confers on the courts authority to tax at their discretion the fees of the United States attorneys, but this authority, or at least this discretion, was taken away by the act of 1799, which, in lieu of such fees "as shall be taxed therefor in the respective courts," (act of 1789,) gives the attorney "such fees in each State, respectively, as are allowed in the supreme court thereof;" and again, by the act of 1841, which prescribed a similar rule for the ascertainment of attorneys' fees. The accounting officers, as I understand, while considering the certificate of the judge as evidence tending to prove that the fees charged were such as were allowed in the State, &c., yet have ever construed the acts of 1799 and 1841 as directory to them, and have considered it their duty to decide upon the evidence whether the fees charged were those authorized by the said acts.

The solicitor contends that this view is correct, and is in accordance with the intent of section two of the act of March 3, 1817, "to provide for the prompt settlement of public accounts," (3 Stat., 366,) and if the view be sustained, the claim of the petitioner must fail for want of proof of the facts necessary to bring it within either of the provisions of the act of 1841. As to the first provision, the accounting officers allege that no fees were allowed in the courts of Louisiana for such services; as to the second provision they say that no fees were allowed *by law* for such services, according to the then existing usage and practice of the court. To recover in this suit the petitioner must show that the fees he charges are either allowed by the laws of Louisiana or by the usage and practice specified in the act of 1841.

If, on the other hand, it be held that the authority given the court by the act of 1789 is yet in force, and that the act of 1841 is addressed to the circuit and district courts, and not to the accounting officers; in other words, that the said courts still tax the attorneys' fees, but do so in accordance with the act of 1841, then it is contended that the court has not acted in pursuance of that authority, and has not taxed the fees. Taxation is an act of the court, and must be proved by the record; in lieu of which the petitioner proves an account against the United States which the judge certifies to be *reasonable*, and which he says he has allowed. This is not taxation or evidence of taxation.

Secondly. Whether these charges were legal or not the marshal had no authority to pay them. The act of May 8, 1792, sec. 4, (1 Stat., 277,) clearly prescribes that at least the fees of the clerk, attorney, and marshal, in criminal prosecutions, shall be presented to and passed at the Treasury before the money shall be drawn for the payment thereof. This petitioner was bound to know the provisions of this act, and he had, moreover, express notice of them in a letter addressed to him by the Auditor under date of April 20, 1850, of which a copy is among the papers furnished by the Comptroller. It does, indeed, appear that the marshal had been in the habit of paying

such demands in advance, but for how long a period or under what authority is not shown. No such practice or usage could avail against the provisions of the statute.

Thirdly. If the payments were made by the marshal in mistake, the United States are entitled to recover. On the part of the petitioner it is denied that the United States can recover if the marshal paid through mistake of law. This point is one of prime importance in the conduct of the operations of the Treasury. So large are the sums handled by the various officers of the government, and so numerous are the agents employed, that it would be almost impossible to find agents in sufficient numbers ready to give an amount of security that would fully indemnify the United States against their default or mistakes. Officers who bond for small sums ordinarily have charge of twenty-fold as much money, and in the army particularly officers who bond for less than $50,000 sometimes disburse millions. The present superintendent of the Capitol extension, whose annual disbursements must considerably exceed a million of dollars, gives no bond. The Treasurer of the United States gives bond for half a million, and has subject to his order never less than twenty millions. To hold that if any one of these officers, in a mistake of law, pay away a sum of public money the United States can never recover it, would be in effect almost to deny the United States any remedy at all, for the sums they ordinarily deal in far exceed any amount which could be made under an execution against them or their sureties.

The point we make for the United States is, that whether the agent overpays through mistake of law, or of fact, or through negligence, *if he pays without authority, the United States can recover.*

In Story on Contracts, (4 ed. § 188,) this position is laid down with the qualification that the person to whom payment is made knows that the agent has no authority to make the payment. The cases there cited fully sustain the position, particularly Ancker and another *vs.* The Bank of England (Doug. 637) and Amidon *vs.* Wheeler (3 Hill 137.) In the latter, the money of the plaintiff was used without his authority by his agent to pay a just demand of the defendant against a third party, and the plaintiff recovered in assumpsit. So in Sigourney *vs.* Lloyd, (8 B. & C. 622,) an agent used a bill of the plaintiff to pay his own debt, and the plaintiff recovered in an action for money had and received. The principle of these two cases is the same, and shows that the action rests, not upon a subrogation of the principal to the rights of his agent, (for in neither case perhaps could the agent himself have recovered,) but upon the fact that the defendant is found in possession of the money of the plaintiff. How the defendant obtained the money is immaterial, so that he obtained it not by such means as made it his own. The question, said Lord Ellenborough, in the Duke of Norfolk *vs.* Worthy, (1 Campbell, 337,) is "whose money was paid," and the answer to this question determines who may maintain the action.

In the case at bar, the petitioner knew the marshal had no authority to pay, because the marshal's authority was given by statute, which the attorney is bound to know, and because the auditor had specially directed the attorney's attention to this very provision of law in his

letter of April 20, 1850, before, so far as appears, he had drawn any money from the marshal.

There is a wide difference between the authority given a public agent to purchase supplies, or employ labor, and that given to a paymaster or similar agent to pay the compensation of other public officers. The former may make contracts; the latter cannot, he is a mere conduit to convey a certain portion of the public money to the authorized recipient, and if he conveys too much, it may be almost said that it is rather through accident than mistake.

No public officer is by law entitled to draw his compensation from the treasury otherwise than upon an account stated by the proper accounting officers. It is for the convenience of public officers that in some cases disbursing agents are furnished with funds in advance to pay them at the day, without incurring the delay of a settlement at the treasury. But this settlement has still to be made, and the position might be maintained that officers receiving their salaries from a disbursing agent, in advance of such settlement, do so under any implied promise to abide the result of such settlement, and refund if it should then appear that they have been overpaid.

One of the points made for the petitioner is, that "the Comptroller had no right to open the marshal's settled account, and charge [the] petitioner" with the sums paid him by the marshal. For the United States it is denied that the marshal's account has been opened. The marshal's account was closed by crediting him with money which he had transferred to the attorney. Such was the original settlement, and so it stands now. The same act which credited the marshal (decision of May 19, 1853) debited the attorney. Up to that time, the question was only which of the two should be held liable for the money; the decision was, he who had it in his hands. The accounting officers had never admitted the payment as a legal charge against the United States.

It is further alleged by the accounting officers that a portion of the service charged for in the bills has since been embraced in another bill rendered by the petitioner, and has been paid for by the United States. This is the charge of $500, charged under date of June 30, 1850, and paid January 8, 1851, for professional services before Judge McCaleb and Commissioner Baldwin, in the criminal examination of N. Lopez, charged with violation of the act of April 20, 1818, proceedings begun and conducted pursuant to orders from the Executive department. After this charge had been rejected, and after some negotiations as to compensation for unofficial services, detailed in the Comptroller's letter of January 19, 1857, the petitioner made out a bill "for unofficial service and extraordinary expenses, in the years 1850 and 1851, connected with, and growing out of, invasions of the island of Cuba by military expeditions from the United States, $1,750." This was paid. If the service in question was unofficial, it comes precisely within the class embraced in this account, and the sum of $1,750 is charged for and covers all services of that description. If, on the other hand, the service was official, it is clearly paid for by the salary of his office.

II. *As to the charge of* $5,000, *which was not paid by the marshal.*

This claim is for prosecuting, in the circuit court, persons indicted for breach of the neutrality laws. It is similar to the charges above discussed for prosecuting offenders. The Comptroller rejected the claim on the 15th of September, 1851, and his decision of that date is so full and clear that it is unnecessary to do more than refer to it here.

It was after the rejection of this claim, also, that the account of $1,750 was presented by the petitioner and paid by the United States.

The Comptroller in his report of January 19, 1857, (see remarks on pp. 3 and 9 of MS.,) takes the ground that the bill for $1,750 included the services charged in the bill for $5,000, which had been previously rejected; but this ground was not taken in the report of October 18, 1853, (pp. 4 and 5,) where, on the contrary, the Comptroller expressed the opinion that the petitioner would ultimately receive a large portion of the claim. The report last cited was made to he Secretary of the Treasury, applying for instructions whether a small sum found due to the petitioner should be paid to him, or should be set off against the sum of $3,880, charged against him as above shown. The Comptroller intimates in this report, that out of the $3,880 and $5,000 claimed, certainly so much would ultimately be allowed as to cover his indebtedness of $3,880. The Secretary thought it unnecessary to retain anything more, and the sums found due were paid the petitioner. See in this connexion the act of January 25, 1828, (4 Stat., 246.)

III. *As to the just mode of settling this claim.*

Although the petitioner has received all that he is entitled to claim by the laws in force when the service was rendered, yet it is admitted in the Comptroller's report of October 18, 1853, that he has an equitable claim against the United States. This claim can only be asserted under that clause of the act of February 26, 1853, which provides additional compensation for attorneys in districts "where the law allows no taxable attorneys' fees." That such is Mr. Hunton's case, is admitted by himself in having claimed and received under this clause additional compensation for certain services in the years 1851, 1852, and 1853.—(Report of February 28, 1854.)

The solicitor, adopting the Comptroller's views, insists that the petitioner is entitled to no compensaiion beyond what has already been provided by the act above cited, and that he cannot maintain his action in this court until he shall have pursued the course prescribed by the act of March 3, 1817, sec. 2, (3 Stat., 366,) by presenting his account at the treasury for adjustment under the act of February 26, 1853.

JNO. D. McPHERSON,
Deputy Solicitor.

UNITED STATES COURT OF CLAIMS.

LOGAN HUNTON *vs.* UNITED STATES.

Brief of Petitioner.

The petition is referred to for a statement of the case.

On behalf of the petitioner it will be contended:

The judge of the district court of the United States was empowered to allow the petitioner the sums of $5,000, $1,180, $2,200, and $500, allowed by the said judge.

The comptroller had no right to open the marshal's settled account, and charge your petitioner with the sums of $1,180, $2,200, and $500. He is entitled to these sums, and the further sum of $5,000 allowed him by the judges of the district court, with interest from the time they were presented at the treasury for audit.

In the course of the argument reference will be made to the following act of Congress and authorities:

The 35th section of the act of September 24, 1789, 1 S. L., p. 92.

This section enacts that in the courts of the United States all persons may plead and manage their own causes, or by the assistance of such counsel or attorneys as by the rules of the court shall be permitted to manage causes therein. It directs an attorney to be appointed in each district to prosecute all crimes, &c., and all civil causes in which the United States shall be concerned; "and he shall receive, as a compensation for his services, such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be tried."

Act of May 8th, 1792, 1st S. L., 625, fixes compensation of marshals, &c.

Section 4th. Compensation of attorneys is per diem mileage, "and such fees in each State as are allowed in the supreme court thereof;" fees in admiralty cases, and an annual sum of $200 to certain district attorneys, including the attorney of the Virginia district.

Section 5th. "For all services in criminal cases performed by the attorney for the district of Virginia, and for which no fees are allowed by law for similar services in the courts of that State, he shall be allowed such sum or sums as the court in which the same is rendered shall consider a reasonable compensation therefor."

Act of 26 March, 1804, creating two territories in Louisiana, sec. 8, 2 S. L. 286, directs an attorney to be appointed in the district, who, in addition to his stated fees, shall be paid $600 per annum for his extra services.

Act of April 8, 1812, admitting Louisiana into the Union, 2 S. L. 703, directs there shall be appointed in said district an attorney, "who shall, in addition to his stated fees, be paid $600 annually as full compensation," &c.

Act of 3d March, 1823, dividing Louisiana into two districts, sec. 2, 3 S. L., p. 775, directs the appointment of an attorney for the western district, who shall receive an annual compensation of $200, "and such fees and emoluments as are allowed to the attorney of the United States for the eastern district of Louisiana."

In the appropriation bill of March 3, 1841, 5 S. L. 427, there is a proviso that in lieu of all fees and emoluments, &c., in districts where the present entire compensation exceeds $1,500 per annum, the officers may receive the fees allowed by the laws of the State in the highest courts of the State; and for any service performed by said officers "in discharge of their official duty, for which no compensation is provided in the laws of said States, respectively, the said officer may receive such fees as are now allowed by law, according to the existing usage and practice of said courts of the United States."

Act of August 3, 1812, (supplementary to the judiciary act of 1789,) 5 S. L., p. 516, sec. 7, authorizes the supreme court to prescribe regulations to the circuit and district courts for the taxation of costs, and make and prescribe a table of the items of costs.

The claim of the petitioner is for fees taxed and allowed by the judge of the eastern district of Louisiana for services rendered; and

The taxation of fees is the act of the court.

Where there is a law prescribing a table of fees and regulating the taxation, the action of the court must conform to those laws; but where there are no such laws, the court must ascertain the amount; and the taxation is an act of the court, which, if it be within its jurisdiction, is as valid and binding as any other act of the court.

The following authorities may be used in this discussion:

Case of oaths before justices, 12 Coke, p. 131, "when the statute gave power to justices of the peace to require any person or persons, &c., to take the oath, the law *implicité* gave them power to make a warrant to have the body before them, for *quando lex aliquid alicui concedit conceditur et id sine quo res ipsa non potest.*"

Bacon, vol. 7, letter (B,) p. 438.

Dwarris on Statutes, p. 662.

Costs at common law, and prior to any of the statutes giving costs, were given in the form of damages.

3 Black Com., pp. 398, 399.

2d Bacon, title costs, letter (A,) p. 288.

Gilbert's History P. C., pp. 266–'7.

Hullock on Costs, p. 2.

Sayer on Costs, pp. 1, 2

Beames on Costs in Equity, pp. 4, 10; Law Library, 22d vol.

Mr. Webster's Argument on Prescott's Case; Webster's speeches, Boston edition, 1830, pp. 142–'3–'4.

Coke Litt., 368 b., where, commenting on Stat. W. 1, which prohibits officers from taking fees, he says: "But yet such reasonable fees as have been allowed by the courts of justice of ancient time to inferior ministers and attendants of courts, for their labor and attendance, if asked and taken of the subject is no extortion."

U. S. vs. *Ringgold*, 8 Peters, p. 150.

The costs, before the statutes were offered or taxed by the court or jury—since the statute, by the court through its proper officer.

Greesley's case, 8th Coke, pp. 39, 40, &c.

Pilford's case, 10th Coke, pp. 116–'17.

Vaughan's case, 5 Coke, p. 49; Hall's case. 5 Coke, p. 51.

Opinions of Att's Gen'l, old opinions—Mr. Wirt, p. 240; Mr. But-

ler, pp. 997, 1133, 1178; Mr. Nelson, pp. 1673, 1664; Mr. Mason, pp. 1767, 1809; Mr. Johnson, p. 2074, containing opinions of Story and Taney.

On the claim of interest, the following authorities are referred to:

Sellech vs. *French*, 1st American cases, 341.
Beaumarchais vs. *Commonwealth*, 3 Call., 107; Marg. 123.
Com. vs. *Cunningham*, 4 Call., 431.
Attorney General vs. *Turpin*, 3 Hen. & Munf., 548.
Respublica vs. *Mitchell*, 2 Dall., 101.
Attorney General vs. *Cape Fear, N. Co.*, 2, Iredell, 444.
Milne vs. *Rempublicam*, 3 Yeates, 102.
Auditor vs. *Dugger*, 3 Leigh, 241.
Commonwealth vs. *Newton*, 1 Hen. & Munf., 90.
Hamilton's Report on Finances, January 1790.
1 vol. Reports on Finances, pp. 12, 13, 14, 27,
Hamilton on Public Credit, do., p. 194: "When a government enters into a contract with an individual, it deposes as to the matter of the contract its constitutional authority, and exchanges the character of a legislator for that of a moral agent, with the rights and obligations of an individual. Its promises may justly be considered as excepted out of *its power to legislate*, unless in aid of them. It is, in theory, impossible to reconcile the two ideas—of *a promise which obliges with a power to make a law which can vary the effect of it.*"
U. S. Bank vs. *Planters' Bank*, 9 Wheat., 907: "Government, by becoming a corporation, lays down its sovereignty so far as respects the transactions of the corporation," &c.
Wood vs. *Robbins*, 11 Mass., 503, 504.
Dodge vs. *Perkins*, 9 Pick., 368.
Jones vs. *Williams*, 2 Call., 106: "Interest allowed, because it is natural justice that he who has the use of another's money should pay interest."
Retroactive laws.—It is a general rule, that no statute is to have a retrospect beyond the term of its commencement.
Dwarris, pp. 680, 681.
"Where rights are infringed, where fundamental principles are overthrown, where the general system of law is departed from, the legislative intention must be expressed with irresistible clearness to induce a court of justice to suppose a design to effect such objects."
Aldridge vs. *Williams*, 3 Howard, 1.

S. S. BAXTER.

IN THE COURT OF CLAIMS.

LOGAN HUNTON *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court:

In the year 1849 the petitioner was appointed and commissioned attorney of the United States for the eastern district of Louisiana

He claims that the United States are indebted to him for official services as follows, to wit: (1) in the sum of seven hundred and sixty dollars; (2) in the sum of two hundred and seventy-five dollars; and (3) in the sum of five thousand dollars; amounting, in the aggregate, to the sum of six thousand and thirty-five dollars.

(1) and (2.) The first two sums (of $760 and $275) have been audited and allowed by the accounting officers of the treasury, and are not now disputed.—(See document "B.")

(3.) The third sum ($5,000) is claimed for services rendered in the United States circuit court for the eastern district of Louisiana, in the year 1851, in certain criminal cases, to wit: The United States *vs.* Narcisso Lopez; Same *vs.* John Henderson and others; Same *vs.* Theodore O'Hara and others; Same *vs.* L. J. Sigur; and Same *vs.* Lewis, master of steamship Creole; each case being on indictment under the sixth section of the act of April 20, A. D. 1818. The rendition of the alleged services in these cases is admitted, but the petitioner's title to compensation is denied.

The United States insist that the petitioner is indebted to them in the sum of three thousand eight hundred and eighty dollars, which they allege was paid him by the marshal without authority. In the settlement of the marshal's accounts at the Treasury Department this sum was allowed him, and at the same time charged against the petitioner. The sum of one thousand one hundred and eighty dollars, part of the sum of $3,880, was claimed for professional services rendered by petititioner in certain criminal cases, from the 30th day of June, A. D. 1849, to the 1st day of January, A. D. 1850, both days inclusive, before a commissioner of the United States.—(See document "A.") The sum of four hundred dollars, other part of the above sum of $3,880, was claimed for professional services rendered by the petitioner in certain other criminal cases, from the 2d day of January till the 30th day of April, A. D. 1850, both days inclusive, before a commissioner of the United States.—(See document "A.") The sum of five hundred dollars, other part of the above sum of $3,880, was claimed for professional services rendered by the petitioner in the case of the United States *vs* Narcisso Lopez, charged with a violation of the act of April 20, A. D. 1818, (the proceedings having been begun and prosecuted pursuant to orders of the Executive department,) on examination commenced before the judge of the district court and ended before a commissioner.—(See document "A.") And the sum of eighteen hundred dollars, the residue of the above sum of $3,880, was claimed for professional services rendered by the petitioner in certain criminal cases on indictments in the district court for the eastern district of Louisiana, from the first day of January to the 30th day of June, A. D. 1850.—(See document "A.")

If the pretensions of the petitioner be sustained, then the United States are indebted to him in the sum of six thousand and thirty-five dollars.

If the pretensions of the United States be sustained, then the petitioner owes them two thousand eight hundred and forty-five dollars. They claim against the petitioner, for money paid him by the marshal without authority, $3,880, and they admit that he is entitled to the

above mentioned sums of $760 and $275 = $1,035. The sum of $3,880 — $1,035 = $2,845.

We will first consider the petitioner's claim for five thousand dollars.

A copy of the petitioner's account for this item of his claim is on file in this case.—(See paper "I.") The judge of the district court certified as follows: "I, Theodore H. McCaleb, judge of the United States district court, eastern district of Louisiana, have examined the charges made in the above named criminal cases, and, finding the same reasonable and proper, have allowed the same." The clerk of the circuit court of the United States for the eastern district of Louisiana certified, that the petitioner "has rendered the services in the above criminal cases specified, and that his charges therefor are legal and proper." John R. Grymes, Garnell Duncan, William Randolph, C. Roselius, J. P. Benjamin, and Miles Taylor, members of the bar of New Orleans, and practitioners in the United States circuit court there, certified "that the charges made by" the petitioner "in the above account for his services are by" them "deemed reasonable and proper." J. N. Lea, judge of the second district court of New Orleans, certified "that charges for services similar to those stated in the cases mentioned in the foregoing account as having been rendered by Logan Hunton, attorney of the United States, would by" him "be deemed reasonable and proper, had such services been rendered in any State court of the State of Louisiana by an attorney authorized to receive pay and compensation for his services in proportion to the labor and ability required, and in proportion to the importance of the case."

The First Comptroller, in a long report, dated September 15, A. D. 1851, rejected this item of the petitioner's claim, upon the ground that the laws then in force did not provide any compensation for the services rendered, except five dollars a day for attendance in court, and a small salary. He held that the executive department of the government could afford the petitioner no remedy, unless the President should treat his claim as a part of the contingent expenses of our intercourse with foreign nations. The law of Louisiana allows no taxable fee in such a case in the supreme court of that State.

The Secretary of the Interior, in a letter to the First Comptroller of the Treasury, dated August 5, A. D. 1852, said: "I have examined the claim of Logan Hunton, the United States attorney for the eastern district of Louisiana, for services rendered in certain criminal prosecutions in the year 1851, growing out of the invasion of the island of Cuba, and conceiving that, under the Attorney General's opinion of the 5th of July, 1851, I have no power to look behind the certificate of the court in which the services were rendered, and that those certificates are conclusive and binding on the accounting officers of the treasury, the account, with accompanying papers, is herewith returned for settlement accordingly, payment to be made out of the judiciary fund." But the payment was not made.

The 35th section of the act of Congress, entitled "An act to establish the judicial courts of the United States," approved September 24, A. D. 1789, provides as follows: "And there shall be appointed in

each district a meet person, learned in the law, to act as attorney for the United States in such district, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court in the district in which that court shall be holden. And he shall receive as a compensation for his services such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be."—(1 Stat. at L., p. 92-3, ch. 20.)

The third section of the act of Congress, approved May 8, 1792, provides "that from and after the passing of this act, the fees and compensations to the several officers and other persons hereafter mentioned, shall be as follows, that is to say, * * * * *; to the attorney of the United States for the district, such fees in each State respectively as are allowed in the supreme courts of the same, and also the like compensation for travelling as is above allowed to the clerk of the district and circuit courts."—(1 Stat. at L., p. 276-7, ch. 36.)

The fourth and fifth sections of the act of Congress, approved February 28, A. D. 1799, provide as follows: § 4. "That the compensation to the attorneys of the respective districts of the United States shall be as follows, to wit: for each day which any such attorney shall necessarily attend on business of the United States, during the session of any district or circuit court, five dollars; for travelling from the place of his abode to such court, ten cents per mile; and such fees in each State, respectively, as are allowed in the supreme court thereof; and in the district courts, his stated fees in the cases herein mentioned shall be as follows, to wit: for drawing interrogatories, five dollars; for drawing and exhibiting libel, claim, or answer, six dollars; and for all other services in any one cause, six dollars. And the annual sum of two hundred dollars, as a full compensation for all extra services, shall be allowed and paid by the United States to each district attorney for the districts of Maine, New Hampshire, Vermont, Rhode Island, Connecticut, New Jersey, Delaware, Virginia, North Carolina, Georgia, Kentucky, and Tennessee."—(1 Stat. at L., p. 625-6, ch. 20.)

§ 5. "That for all services in criminal cases performed by the attorney for the district of Virginia, and for which no fees are allowed by law for similar services in the courts of that State, he shall be allowed such sum or sums as the court in which the same is rendered shall consider a reasonable compensation therefor."—(1 Stat. at L., p. 626, ch. 20.)

The ninth section of this act repeals, in express terms, the third section of the act approved May 8, A. D. 1792, above quoted.—(1 Stat. at L., p. 626, ch. 20.)

The fifth section of the act approved May 8, A. D. 1792, provides that "the legal fees of the clerk, attorney, and marshal, in criminal prosecutions, shall be included in the account of the marshal; and the same having been examined and certified by the court, or one of the judges of it, in which the services shall have been rendered, shall be passed in the usual manner at, and the amount thereof paid out of,

the treasury of the United States to the marshal, and by him shall be paid over to the persons entitled to the same, and the marshal shall be allowed two and a half per cent. on the amount by him so paid over, to be charged in his future account."—(1 Stat. at L., p. 277, ch. 36.)

The second and fourth sections of the act of Congress, entitled "*An act for the admission of the State of Louisiana into the Union, and to extend the laws of the United States to the said State,*" approved April 8, A. D. 1812, provide as follows: § 2. "That all the laws of the United States, not locally inapplicable, shall be extended to the said State, and shall have the same force and effect within the same as elsewhere within the United States."—(2 Stat. at L., p. 703, ch. 50.)

§ 4. "That there shall be appointed in the said district a person learned in the law to act as attorney for the United States, who shall, in addition to his stated fees, be paid six hundred dollars annually as a full compensation for all extra services."—(Ibid.)

The act of Congress approved March 3, A. D. 1841, provides "that hereafter, in lieu of all fees, emoluments, and receipts now allowed in districts where the present entire compensation of any of the officers hereinafter named shall exceed the sum of one thousand five hundred dollars per annum, it shall and may be lawful for the United States clerks, attorneys, counsel, and marshals, in the district and circuit courts of the United States in the several States, to demand and receive the same fees that now are or hereafter may be allowed by the laws of the said States respectively where said courts are held, to the clerks, attorneys and counsel, and sheriffs, in the highest courts of the said States in which like services are rendered; and no other fees or emoluments, except that the marshals shall receive in full, for summoning all the jurors for any one court, thirty dollars; and shall receive for every day's actual attendance at the court five dollars per day; and for any services, including the compensation for mileage, performed by said officers in the discharge of their official duty, for which no compensation is provided by the laws of said States respectively, the said officers may receive such fees as are now allowed by law according to the existing usage and practice of said courts of the United States; and every district attorney, except the district attorney of the southern district of New York, shall receive, in addition to the above fees, a salary of two hundred dollars per annum: *Provided*, That the fees and emoluments retained by the district attorneys, * * * * exclusive of * * * *, shall in no case exceed, for the district attorneys, * * * the sum of six thousand dollars for each."—(5 Stat. at L., p. 428–9, ch. 35.)

The act of Congress approved February 26, A. D. 1853, provides "that in lieu of the compensation now allowed by law * * * * to United States district attorneys, * * * * * in the several States, the following and no other compensation shall be taxed and allowed." It then prescribes certain fees, &c, and amongst them, "for examination by a district attorney, before a judge or commissioner, of person or persons charged with crime, five dollars per day for the time necessarily employed." It also makes this further provision: "In every case where a district attorney has, during the last six years, prosecuted or defended a suit in which the United

States was concerned, in a district where the law allows no taxable attorney's fees, and for which he has received no compensation, except his per diem and annual salary, he shall be paid for his services according to the provisions of this act.—(10 Stat. at Large, p. 162–'2, ch. 80.)

These, it is believed, are all the acts of Congress which in any way bear upon this case.

The act of 1789 makes it the duty of a district attorney "to prosecute in such district all delinquents for crimes and offences cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned." No further duty was required of him by that act. The language just quoted clearly requires him only to attend to *suits* and *prosecutions in court*. But if there could be any doubt upon this point, it is removed by the provision that "he shall receive as a compensation for his services such fees as shall be taxed therefor in the *respective courts* before which *the suits* or *prosecutions* shall be."

It has been uniformly considered that the suits contemplated by this act are only those which may be instituted in the courts of the United States; and that it is, therefore, *no part* of the *official duty* of a district attorney to attend in the State courts to the management of suits in which the United States are concerned.—(2 Opin. Att'ys Gen., 319; 3 do., 46; 4 do., 514; 6 do., 299; 7 do., 84.) For services in the State courts, it has been said, he "may be allowed fees either in the analogy of those of the statute, or otherwise upon a special retainer by a head of department, according to the nature of the business, and at the charge of the funds of such department."—(6 Opin. Att'ys Gen. 299; 7 do., 84.)

It is plain, too, that under the act of 1789, a district attorney was not *officially* bound to attend in behalf of the United States to a criminal examination out of court, either before a judge or before a commissioner. His duty, by the express terms of that act, extended only to *prosecutions in court*. For such services, therefore, if rendered at the request, or by the direction of the executive department of the government, he was entitled to compensation upon the same principle which governed his compensation for services rendered in the State courts.

Under the act of 1789, district attorneys were allowed for their services "such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be." The word "taxed" is a technical term, and is used in the sense of "allowed." The fee in each case, therefore, under this act depend upon the sound discretion of the court. It was not ascertained by the law, but determined by the court; and the allowance made by the court was conclusive.

The act of 1792 provided that, from and after its passage, "*the fees* and *compensations*" to a district attorney "shall be as" therein mentioned. It then gave him "such fees in each State, respectively, as are allowed in the supreme courts of the same" It will be observed that the language of this act is not so broad and comprehensive as that of the act of 1789. Whilst the latter are continued in force, no case

could have occurred in which a fee could not have been "taxed" by the court for the district attorney; but under the act of 1792, he was not entitled to any fee in a case in which, if it had been in the supreme court of the State, no fee would have been allowed. Was he, nevertheless, entitled to no fee whatever in such a case? This, it is obvious, depends upon the construction of the act of 1792. If it repealed the act of 1789 in this respect, then the district attorney was entitled to no fee in such a case; but if did not so repeal the act of 1789, then the latter act continued in force as to that case, and still authorized the court in which the case was to "tax" a fee in his behalf.

If the act of 1792 repeals the provision in the act of 1789, in relation to the fees of the district attorney, the repeal is not express, but implied; and the implication arises from the force of the words, "*the fees and compensations.*" This language is susceptible of two constructions: (1.) It may mean that *the only fees* of district attorneys shall be those prescribed by the act of 1792. If this be its true meaning, then the act of 1792 repealed the act of 1789, and the consequence was, that as no provision was made by the act of 1792, giving a district attorney compensation in a case in which, were it to occur in the supreme court of the State, no fee would be allowed, he would be entitled to no compensation in such a case. (2.) But its true meaning may be, that *the fees* and *compensation* of a district attorney, *in the cases therein provided for*, shall be as therein declared. If this be the proper construction, then the act of 1792 repealed the act of 1789 only as regards the cases for which it provides, and left the latter in full force in all other cases. The two acts could then have stood together, the act of 1792 governing in all the cases for which it provided, and the act of 1789 in all other cases. In all cases in which fees were allowed in the supreme court of the State, the district attorney would have been entitled to such fees under the act of 1792; and in all cases in which fees were not allowed in the supreme court of a State, he would have been entitled to such fees as might have been taxed in the courts in which the cases were, under the act of 1789.

But the act of 1792 was expressly repealed by the act of 1799. The latter act, however, did not remove the difficulty presented by the act of 1792. Upon that point, the language of the two acts is substantially the same. The act of 1799 declares "that the compensation to the attorneys of the respective districts of the United States shall be as" therein mentioned; and then provides that they shall receive "such fees in each State, respectively, as are allowed in the supreme court thereof." It is apparent, therefore, that if the act of 1789 was in any respect left unrepealed by the act of 1792, it was in the same respect left unrepealed by the act of 1799.

Thus stood the law when the State of Louisiana was admitted into the Union. By the act of admission, all the laws of the United States, not locally inapplicable, were, as we have seen, extended to that State, and given the same force and effect within the same as elsewhere within the United States. There was an express provision that the district attorney in that State should be paid, in addition to his *stated fees*, six hundred dollars annually. His stated fees were, of course, those prescribed by the laws of the United States already noticed.

This review of the several acts of Congress enables us to understand the provision in the act of 1841 that "for any services, including the compensation for mileage, performed by said officers in the discharge of their official duty, for which no compensation is provided by the laws of said States, respectively, the said officers may receive such fees as are now allowed by law, according to the existing usage and practice of the said courts of the United States."

It is conceded that at the time of the passage of the act of 1841 the entire compensation of the district attorney for the eastern district of Louisiana exceeded the sum of one thousand five hundred dollars *per annum*. That act, therefore, is applicable to his case. By it he was authorized to demand and receive the same fees which then were or thereafter might be allowed by the laws of his State, in the highest courts thereof "in which like services are rendered," and no other fees or emoluments except as therein mentioned. Then followed the provision mentioned in the preceding paragraph.

The provision last noticed must, it seems to us, govern the petitioner's claim for the above mentioned sum of five thousand dollars. Therefore, as the laws of Louisiana did not allow a fee for such services as those for which that sum is now claimed in the highest court of that State "in which like services are rendered," he is not entitled thereto unless, at the time of the passage of the act of 1841, such fees were "allowed by law according to the existing usage and practice" of the district and circuit courts of the United States.

The provision allowing "such fees as are now allowed by law according to the existing usage and practice of said courts," had reference to the difficulties connected with the construction of the act of 1799, and was designed to give validity to any practice or usage which had grown up under that act in any of those courts.

The Comptroller, in a communication to the counsel for the petitioner and the deputy solicitor of this court, dated February 16, A. D. 1858, says: "No custom or practice is known to have existed in regard to any allowance of fees to district attorneys in Louisiana beyond the amount provided, or supposed to have been provided, in the act of February 28, 1799, until subsequent to the date of the opinion of Attorney General Mason, of November 10, 1845, which please see.

"Previous to that opinion all the allowances that I have been able to find, as made to the United States district attorneys in Louisiana, are as follows: Salary under act of 1812, at $600 *per annum*, up to 3d quarter of 1843, when it appears to have been decided that under the act of 1841 the attorney of the eastern district of Louisiana was entitled to but $200 *per annum* as a salary; *per diem* for necessary attendance on court at $5 per day; from April term, 1814, to January, term, 1817, a taxed fee of $18 in each civil and criminal case decided; from December term, 1829, to December term, 1832, a taxed fee of $17, in each civil and criminal case decided. In December term, 1841, Bailie Peyton, the United States district attorney, eastern district of Louisiana, charged a taxed fee of $10 only in seven cases, criminal, but after that term he taxed a fee of $17 in each civil case, and $17 for *each person* indicted and tried up to the close of his term, May 7, 1845. His successors, Mr. Downs and Mr. Durant, did the same."

The precise period of the passage of the act of 1841 is not expressly embraced by the Comptroller's commuication; but as from December term, A. D. 1832, till December term, A. D. 1841, no change is indicated, we infer that at the time of the passage of the act of 1841 "the existing usage and practice of" the federal courts of Louisiana was to tax a "fee of $17 in each civil and criminal case decided." How this usage and practice arose it is not material to inquire. It is enough that they existed at the time of the passage of the act of 1841. As they were then the "existing usage and practice of" the federal courts of Louisiana, they became incorporated into that act as a part of it so far as that State was concerned.

We are therefore of the opinion that in each of the cases constituting the third item of the petitioner's claim he was entitled to a fee of *seventeen dollars*, making, in the aggregate, the sum of *eighty-five dollars*, instead of the sum of *five thousand dollars*, the amount claimed by him.

We come now to consider the demand of the United States against the petitioner. We have already seen that eighteen hundred dollars, part of the sum of three thousand eight hundred and eighty dollars, which constitutes this demand, was originally claimed by the petitioner for fees in certain criminal cases on indictments *in court*. There were fourteen of those cases, and, if the views already presented be correct, the petitioner was entitled in each of them to a fee of seventeen dollars, making an aggregate of two hundred and thirty-eight dollars, instead of the sum of eighteen hundred dollars, the sum claimed by him therefor. The difference between the above sum of two hundred and thirty-eight dollars and eighteen hundred dollars is *fifteen hundred and sixty-two dollars*.

If the petitioner be entitled to the first two items of his claim, and only to *eighty-five* dollars on account of the third, but is indebted to the United States in the sum of fifteen hundred and sixty-two dollars, as the latter exceeds the amount due him, we cannot be authorized to report to Congress a bill in his favor.

When the above sum of *three thousand eight* hundred and eighty dollars was allowed to the marshal, as already stated, E. C. Seaman, acting Comptroller, said: "And though I allow them to the marshal in this case on account of their having been paid by him in good faith and in accordance with previous usage, I cannot allow them to the attorney. As to the attorney, they must be suspended as improperly paid, the amount thereof charged to him, and he may state a new account for those services under and in accordance with a paragraph in the new fee bill of February 24, 1853."

The above mentioned sum of *fifteen hundred* and *sixty-two dollars*, part of the above mentioned sum of *three thousand eight hundred and eighty dollars*, having been paid to the marshal under those circumstances, may, we think, properly be claimed by the United States against the petitioner.

But it is urged that the account for the petitioner's claim of five thousand dollars having been certified by one of the judges of the court in which the services were rendered, such certificate, under the fifth section of the act of 1792, is conclusive in his favor. The certi-

ficate may be conclusive as to the matter to be certified—the facts to be ascertained by it. The certificate ascertains the character of the services and the person by whom they are rendered, but the *law* prescribes the fees to be paid for them.

We have examined the petitioner's claims only as *legal* demands against the United States. As such they cannot be sustained, except to the extent already noticed. It may be true that the services of the petitioner were of a very highly meritorious character, and that the fees allowed by law therefor are a very inadequate compensation. But these are considerations into which it is not competent for this court to enter. They belong exclusively to Congress, and Congress will doubtless do justice in the premises.

Our opinion is, that the petitioner is not entitled to relief.

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